1945 (K) File No. S. Bij. 3/45

DEPARTMENT

BRANCH

Subject:— S.:t.s Bijapur.

Civil Suits Nos. 433 and 434 of 1944.

Shivalingappa Malkajappa Salunke of Talikot — Pltff.

Vs

The Province of Bombay. —— Deft.

claim Rs. 300/-

Basalingappa Chanbasappa Kinaji of Sindgi — Pltff.

Vs

The Province of Bombay —— Deft.

claim Rs. 200/-.

Rs. 306

File No. S Bij 3/45

Std. Sectt. Slip 24-B

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Report under rule 118 of the Law Officers Rules

...

1.

P-7 (i) The number of suit is 434 of 1944.

P-10 (ii) It was instituted on 6-10-44 in the Court of First Class Sub-Judge, Bijapur.

(iii) The names of the parties are as under:-

P-7 Plff:-Basalingappa Chanbasappa Kinagi of Sindgi Taluka Sindgi.

V.S.

Deft:- The Province of Bombay.

P-9 (iv) the value of the claim is Rs.

P-5 (v) the date fixed by the Court for first hearing was on 7-12-44, and

P-3 (vi) the notice of the suit under section 80 C.P.C. is dated 27-7-44 and was received in the Collector's (file iii) Office on the same day.

2.

(a) The copy of the plaint in English is at pages 7-10(file No.2).

(b) The facts of the case are that Talikot is an alienated village in the Muddebihal Taluka. With the consent of the Inamdar, City Survey was introduced in this village under section 216(2) of Land Revenue Code and the holders of all the lands therein are thus affected as though they are holders of lands in an unalienated village (Sect.217 of L.R.C.) under section 37 of Land Revenue Code, the enquiry officer held an enquiry and found the open space in a rectangular form measuring 12'-8" X 10'-6" X 12'-5' X 11'-0" covering an area of 14-3 Sq yards in front of the Plff's shop in P-63 Chatta No.584, as shown in Red in the copy of the encroachment register, to be encorachment and issued notice in respect of encroachment. The notice was P-65 served on 5-8-43. The suit was filed after one year from the date of service of order.

The allegations made by the Plff in paras 4 and 5 of the plaint are not true, in view of the fact that City Survey was introduced in the Village Talikot, as stated above and in view of the Enquiry Officers' order. The allegations in paras 3 & 6 of the plaint are also not true.

Talikot is an Inam Village of class I-Political Saranjam and the entire village is granted in Inam to the holder (Saranjamdar). But the extract from the Land....

Land Alienation Register in respect of this village shows that while granting the village in Inam, an area of 316 acres of the village was deducted from the total area of the village as unassessed waste. The Ghoswara (Abstract) of V.F.I. of the village shows that there are no unassessed waste lands belonging to Government in that village. It, therefore, appears that the area of unassessed waste land deducted from the Inam grant consists of the areas covered by roads, village site, tanks, free pastures, burial ground i.e. the area shown under the head B(2) in the abstract. The total area under this head is 291-15 (A. G.) while the area deducted as unassessed waste from the Inam grant is 316-0- (A. G.). The difference may be due to the fact that while the alienation Register shows the position of the area in 1874 when the grant was made, the abstract shows its present position. There must have been many changes in the area since the grant was made.

P-37 (Alei) in C.S. no 433/44

P-43 (Alei) in C.S. no 433/44

Thus, since the area under roads and village site has not been included in the grant, they do not vest in the Inamdar. Besides, prima facie, a saranjamdar is not a grantee of the soil but of the royal share in the revenue only(pl vide article 17 of the Alienation Manual). In case reported in 25 B.L.R. 527 it has been laid down that there is no presumption that saranjam grant is of revenue only and that the quality of the grant is to be determined on the facts in each case.

The suit, therefore, ought to be opposed on the grounds that city survey was properly introduced, that the order of the Enquiry Officer is legal and binding upon the Plff, that the Plff is not the owner of the site, that he has not proved his title by adverse possession and that the plff is not entitled to any reliefs prayed for the hfm.

Collector of Bijapur.

"3

Bijapur Civil Suit Nos433 and 438 of 1944.

These two suits are in respect of encroachments over lands forming part of public roads in the village of Talikot (Taluka Muddebihal). These encroachments were detected in a City Survey Inquiry introduced in the village in 1943. The plaintiffs contend that as Talikot is an alienated village belonging to a Saranjamdar, section 37 of the Land Revenue Code has no application to it and the Inquiry Officer's order was illegal. The Record shows that the original British grant to the former Saranjamdar did not include the areas covered by roads, pastures, burial grounds etc. These were excluded from the grant and remain the property of Government. On merits, the plaintiffs' case is weak. The facts are common to both the suits and therefore only one brief has been prepared. The suits may be defended on the lines of the brief.

2. In his endorsements Nos. L.S.T.334 and 335 dated 24-3-1945 the Commissioner, S.D. suggests that the suits are barred under section 11 of the Revenue Jurisdiction Act. This is not correct. In suits under section 37(3) of the Land Revenue Code the bar of section 11 need not be pleaded (Gupte's Land Revenue Code, p.216).

16/4 J & L

~~A A L~~ DSh 24/4

R. & A

Secy Rev

RW 19/4

PSSD may be requested by an urgent wire to furnish copy grt ER creating the Saranjam to enable RLA to see if roads in the village were reserved to Govt when the grant.

MKD 25/4/45

POLITICAL & SERVICES DEPARTMENT
File No. LD 2840/45
26. APR. 1945
Serial No. 9503

suit 4 files to the case Hs. A P&S.D. No. 45/1874 Volume

Mr. Vora

U.O.N. to P&S.D. No. 3242 dated 25-4-45.

P. & S. D/A

Please see GR P. D. No. 3056, dated the 2nd June 1874 which pertains to the Raste Saranjam standing at Serial of the Saranjam List. It will be seen from the Saranjam List that Palikot is one of the villages forming part of the Raste Saranjam. There is however nothing in the GR. or in the Saranjam List to show whether the roads in the village of Palikot (or the any other villages in the Saranjam) were reserved to Govt. at the time of making the grant. It would therefore appear that the entire village of Palikot was granted to the Saranjamdar, particularly in view of what is stated in column 6 of the Saranjam List. Please however see A-A of the Collector of Bijapur's report at pp. 7-9 ante. It will be seen that according to the extract from the Land Alienation Register, while granting the Palikot village to the Sarajamdar an area of 316 acres of the village was deducted from the total area of the village as unassessed waste. The Collector says that it appears that this area consists of the roads, village site, tanks etc.. He therefore considers that the roads and village site do not vest in the Sarajamdar. Since GR, P. & S. No. 3056, dated the 2nd June 1874 (referred to above) is quoted in the extract from the Land Alienation Register, the Collector's presumption at A above seems correct. It is however unsafe to adhere to this view as it would be difficult to prove it in a Court of Law.

These papers may be returned to R&L. A with the above remarks together with L. D. Volume No. 49 of 1874 and the Saranjam List. R&L Dept may be requested to return the Volume and the List when done with

26.4.45
1.5.45

2/5/45

LLR to L. D. 2nd May 45

* or proceedings underlying it or in the proceedings in P. D. Vol. 22 of 1871 which solely pertain to the Raste Saranjam or the proceedings at pp 69 to end of Vol. 31 of 1873

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
P.D. No. 3873
S. No.
Branch A/315-45

L. D.
2-MAY 1945

L. D. Vol 49 of 1874
Saranjam Vol. of 1873

The suits may be defended on the lines suggested. If this is approved, the original ground in para. 2 on p.15 should not be given up; but in addition to it, a fresh para. 2A may be drafted to cover the ground in para. 2 of Mr. Mehta's note at pp. 13-14.

WRD
7/5/45

RLA

Sec/RD.

I agree. We are not on very firm ground, but there is no harm in contending, in what is worth, that the encroached sites formed part of the road land which did not vest in the Sarangpindar. As proposed, we should add a fresh para to cover the point raised by Mr Mehta in para 2 of his note.

PMM
11/5/45

× No. 3682 of 12-5-45 × Sec/RD

12-5-45

L. D. 12 MAY 1945

This may await Mr Mehta's return from leave.

A
11/5.

A.P.A

Please insert AA 2 by note at pp 13-14 ante as para 2A in the grounds of defence.

RM
24/5

R.L. WRD 24/5 R. 24/5 Rem 24/5 (as amended)

As ordered by the R.L.A., para 2 of the note at pp. 13-14 has been inserted as a new para 2A with slight amendments in the grounds of defence (Ltd) (Post). It may be

In the court of Civil Judge, Senior Division Bijapur

Civil suit No. 433/44.

1. Shivalingappa Salunke Plff.

Vs.

1. The Province of Bombay.

Herein the deft by his written statement states as under :-

1. The allegations in para 2 that the paragraphs 2, 4, 5, 6, 7, 8 and 10 of the plaint are denied. space in question forms part of shop property, the allegations in para 4, the allegations in para 5 that the orders of the Enquiry Officer are wrong ultravies illegal unauthorised and not binding on the plff the allegations in para 6 that all the land in the village gaothan would be the property of the Rastas and all the further allegations therein, the allegations in paras 7 & 8 and the allegations about the cause of action and its date in para 10 are denied.

2. The decision in respect of encroachment about the kattas referred to in para 1 of the plaint was communicated to plff on 2-7-43. The suit which is filed more than 14 months thereafter is thus time barred under section 37(3) of the Land Revenue Code read with S. 15(2) of the Indian Limitation Act and therefore this suit ought to be dismissed.

3. Plff's allegations of his ownership over the suit sites as made in the plaint and especially in paras 2 and 7 are denied.

4. The allegations that the kattas have been are in existence from old times the existence of the house have been and that the suit sites are in possession wahiwat of the plff for 60 years or more are denied.

5. The sites in question form part of Public Roads which had been in existence long before the grant of Political Saranjam relied upon by plff. They could not pass to Saranjamdar by any subsequent grant. The suit sites form part of the high ways which are included in unassessed waste and the same was excluded from grant to the Saranjamdar. The suit sites have remained to be the property of Government. The allegations to the contrary made in para 6 of the plaint are denied.

6. With the consent of the Saranjamdar city survey was introduced in the village of Talikot. In an inquiry duly held under S. 37(2) the inquiry officer has rightly held the sites to be e---

encroachments. His decision is correct and is binding on the plff.

7. The plff is not entitled to the declaration and others reliefs prayed for by him.

[On these grounds among others] It is submitted that plff's suit be dismissed with costs.

Therefore

District Government Pleader,
Bijapur.

I, A. C. Angadi District Government Pleader Bijapur hereby declare that what is stated in paras 1 to 7 above is true on information received and believed to be true. Signed in Bijapur on -6-1945.

District Government Pleader,
Bijapur.

In the court of Civil Judge, Senior Division, Bijapur. 9 43

Civil suit No. 434 of 1944.

1. Baslingappa Kinagi Plff.

Vs.

1. The Province of Bombay. Deft.

Herein the deft by his written statement states as under :-

1. The allegations in para 1 of the plaint that the suit site belongs to plff and that it is a part of his sho are denied.

2 . The allegat-ions in paras 3, 4, 5 and 6 are denied.

3. The [site] land in question forms part of Public Roads which [had been in existence] existed long before the grant of Political Saranjam relied upon by plff. It could not pass to Saranjamdar by any subsequent grant. [The suit site] It forms part of the high ways which are included in unassessed waste and the same was excluded from the grant to the Saranjamdar, [The suit site] and has remained [to be] the property of Government. The alle-gations to the contrary made in para 3 and 6 of the plaint are denied.

4. The plff is not the owner of the suit site , nor has he become owner of the same by adverse possession The allegations to the contrary in paras 4 and 5 of the plaint are not true.

5. With the consent of the Saranjamdar city survey was introduced in the village of Talikot. In an inquiry duly held under S. 37(2) the inquiry officer has rightly held the site to be an encroachment His de cision is correct and is binding on the plff.

6. Plff has no cause of action as stated by him in para 8 of the plaint.

7. The. plff is not entitled to the declaration and other reliefs prayed for by him.

~~[on these grounds among others]~~ It is therefore submitted that plff's suit be dismissed with costs.

District Govt Pleader, Bijapur.

I, A. C. Angadi District Govt Pleader Bijapur hereby declare that what is stated in paras 1 to 7 is true on information received and belie-ved to be true. Signed in Bijapur on -6-1945.

District Government Pleader, Bijapur.

Suits :

Bijapur.

Encroachments over lands forming part of public roads in the village of Talikot (Taluka Muddebihal).

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 4211.

Bombay Castle, 1st June 1945.

Letters from the Collector of Bijapur, Nos. L.A.W. 172, dated the 16th March 1945, and L.A.W. 173, dated the 16th March 1945—Forwarding papers in the suits noted in the margin and requesting sanction to their defence.

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, BIJAPUR.
Civil Suits Nos. 433 and 434 of 1944.

Shivalingappa Malkajappa Salunke of Talikot ... Plaintiff;
versus
The Province of Bombay ... ... Defendant.
Claim—Rs. 300.

Basalingappa Chanbasappa Kinaji of Sindgi ... Plaintiff;
versus
The Province of Bombay ... ... Defendant.
Claim—Rs. 200.

Endorsements by the Commissioner, Southern Division, Nos. L.S.T. 334, dated the 24th March 1945 and L.S.T. 335, dated the 24th March 1945—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Bijapur, No. 4210, dated the 1st June 1945—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suits on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original P.Nmoos

P. N. MOOS,
Secretary to Government.

G. R., No. 4211, L. D., dated the 1st June 1945.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1945.

Copy forwarded for information and guidance to

Issued C&P 5/9

Submitted after some 2. File in S Dij 140 (new file)

Bms 6/9

P A P 6/9

13

53

BIJAPUR CIVIL SUITS NOS. 433 AND 434 OF 1944.

Chronological Statement of Facts.

These suits are filed for a declaration that the Order passed by the City Survey Inquiry Officer in respect of certain areas of land beneath the "Katta" (raised platform) and the pavements made by the plaintiffs is illegal and that the plaintiffs are the owners of these lands, and for a permanent injunction restraining Government from recovering the said "Katta" and pavements.

2. The lands in dispute are situated in Talikot, an alienated village of Class I Political Saranjam, in the Muddebihal Taluka. With the consent of the Saranjamdar, City Survey was introduced in this village under section 216 (2) of the Bombay Land Revenue Code. In an inquiry held under section 37 (2) of the Land Revenue Code, the Inquiry Officer found that the plaintiff in suit No. 433 had encroached upon 20 square yards of land beneath the "Katta" adjoining his house in Chalta No. 56 and 14–7 square yards in front of his shop in Chalta No. 582, as shown in the extract from the encroachment register. Similarly he found that the plaintiff in suit No. 434 had encroached upon 14–3 square yards in front of his shop in Chalta No. 584.

p. 15 of file I. (C. S. No. 433).

p. 63 of file I (C. S. No. 434).

3. On 27th July 1944 the plaintiffs in both the suits gave notices under section 80 of the Civil Procedure Code and on 29th September 1944 and 6th October 1944 respectively they filed the present suits in the Court of the First Class Subordinate Judge, Bijapur.

Grounds of Defence.

Limitation.—So far as the site beneath the "Katta" in front of Chalta No. 56 is concerned the suit No. 433 is time-barred under section 37 (3) of the Land Revenue Code read with section 15 (2) of the Indian Limitation Act. It appears from column 15 of the extract from the Inquiry Register and also from the copy of the counterfoil of the Inquiry Officer's order, that the decision in respect of this encroachment was communicated to the plaintiff on 2nd July 1943. The suit is filed on 29th September 1944, i.e., more than 14 months after that date and is therefore time-barred under the aforesaid provisions. As regards suit No. 434, the Inquiry Officer's decision about Chalta No. 584 was communicated to the plaintiff on 5th August 1943 (*vide* extract from the Inquiry Register, column 15). The plaint in this suit is dated 28th September 1944 and it appears to have been registered on 6th October 1944. If the plaint was presented in Court on the latter date, the suit will be time-barred under the same provision. The District Government Pleader should however ascertain the correct date on which the plaint was presented in Court and if necessary take the plea of limitation in this suit also.

p. 17 of file I. Suit No. 433

p. 65 of file I. (Suit No. 434).

2. *Merits.*—The plaintiffs' allegations regarding their ownership over the encroached sites should be denied and they should be put to strict proof thereof. The City Survey Inquiry Officer has held the encroached lands to be part of the public road. That decision is *prima facie* correct and binding on the plaintiffs unless it is shown to be wrong. The plaintiffs contend that Talikot being an "Inam village" belonging to the Raste family of Poona, all lands in the village which would ordinarily vest in Government under section 37 of the Land Revenue Code are the property of the "Rastes of Poona". It is therefore contended that Government has no power to order an inquiry under section 37 of the Code. These contentions will be untenable for the following reasons: The Inquiry Officer has pointed out that the encroached sites formed part of public roads which had been in existence long before the grant of the land by the

British to the Saranjamdar in 1874. The extract from the alienation register shows that the village was granted as Class I, Political Saranjam by Government Resolution, Political Department, No. 3056, dated 2nd June 1874. From columns 12 and 14 it appears that an area of 316 acres was excluded from the grant as unassessed waste. On the other hand the extract from Village Form No. 1 does not show any unassessed waste lands in Talikot belonging to Government. It therefore appears that the area of unassessed waste land excluded from the original grant was the area comprising the roads, village sites, free pastures, burial grounds, etc., shown in column B (2) in the extract from V. F. I. The total area under this head is shown to be 291 acres 15 gunthas. The difference may be due to the changes in the area since the grant was made in 1874. It is thus clear that these lands formed part of the roads which did not vest in the Saranjamdar but remained the property of Government even after the grant was made.

p. 37 of file I (Suit No. 433).

p. 43

2A. In addition, the City Survey Inquiry Officer has held, on evidence before him that these encroachments have been made over public roads which are not merely local but are high ways connecting outlying villages on all sides of Talikot and are part of the general system of roads leading traffic to Bijapur and other important places. He has further held that these roads have been in existence long before the grant of the village as Saranjam. It should therefore be contended that land which prior to the alienation of a village had been dedicated by the State as high road would certainly not pass to the alience by a subsequent grant even of the soil of the village, but the dedication would survive for the benefit of the public. If the roads pre-existed the grant the Collector seems to have the power to take action under section 61 of the Code to protect it from unauthorised occupation. (*See* Gupte's Land Revenue Code 1937 Ed. P. 497). It would, it seems, be equally open to a City Survey Officer to hold an inquiry in respect of encroachments over such roads which do not vest in the Saranjamdar. The District Government Pleader should, in consultation with the Collector lead such evidence as may be available to prove that the encroached sites form part of public roads which existed prior to the alienation of the village.

3. The plaintiffs further contend that the site in front of their shops in Chalta Nos. 582 and 584 have been used for more than sixty years by their customers who come to make purchases on their shops. A similar plea is advanced in respect of the "Katta" in front of Chalta No. 56. This is an indirect attempt to establish title by adverse possession. In order to succeed in this plea the plaintiffs must prove that they have been in possession of the sites for more than 60 years and that such possession was adequate in continuity, publicity and extent: Articles 144 and 149 of the Limitation Act; Radhamony Debi *v.* Collector of Khulna I. L. R. 27 Cal. 943; Secretary of State *v.* Chellikeny Rama Rao I. L. R. 39 Mad. 617. On plaintiffs' own admission, there are no permanent structures on the sites. It appears that they have covered these sites with pieces of gunny bags or corrugated iron sheets to facilitate their customers who have to stand near the shops. Such temporary user of the land is not sufficient to amount to juridical possession: (Framji *v.* Goculdas I. L. R. 16 Bom. 338; Suraji *v.* Secretary of State 39 Bom. L. R. 216). The plaintiffs' claim on the basis of adverse possession must, therefore, fail.

4. As pointed out above, the sites in dispute in these suits form part of the public roads which belong to Government and not the Saranjamdar. The Inquiry Officer was therefore competent to make inquiry in respect of these roads. The acquiescence of the Saranjamdar in respect of the "footpaths" does not in any way enhance the plaintiffs' claim against Government.

5. For these reasons, it should be urged that both the suits fail and must be dismissed with costs.

S. Bijapur 1/5

24/7/45

In the Court of the Joint Civil Judge (Senior Division)
At Bijapur.
Civil suit No. 221 of 1944.

1. Baslingappa Chanbasappa Kinagi 55, Lingayat occ. agriculture and trade of Sindgi.

Vs.

1. The Province of Bombay.

The plff sues for a declaration that the order passed by the Enquiry Officer holding the suit kattas to be an encroachment and for injunction restraining the deft through their servants from removing the same. He alleges that he owns a house bearing chalta Nos. 53 and 54 in Kumbar Galli at Talikot village in Muddebihal taluka. There are kattas on either side of the main entrance door. The deft has recently started city Survey Enquiry in 1943 at Talikot purporting to act under sec. 37 of the Land Revenue Code and on 12-3-1943 the Enquiry Officer made an order thathe held an enquiry on 10-3-1943 and had decided on that day that the kattas were encroachments.

Plff and his predecessors in title were and have been the absolute owners of the site covered by the kattas and they have been in enjoyment of the kattas for more than 60 years Talikot is an Inam village of the Rastas of Poona and all land that would vest in Govt under sec. 37 of the Land Revenue Code would vest in the Rastas of Poona that sec. 37 of the Land Revenue Code has no application and the proceedings held by the Enquiry Officer s purporting to be under Sec. 37 are illegal unauthorised and ultra vires. The Rastas have acquiesced their right in the kattas and being where they are and Govt have no right to delclare them as encroachments . The kattas do not abut the road. The removal of kattas substantially affects the enjoyment of the house and the plff is entitled to an injunction against Govt hence the suit as above.

The cause of action arose on 12-3-1943 when the order was actually passed. Notice under Sec. 80 C.P.C. read with Sec. 176 of India Act of 1935 is served on the collector of Bijapur . The court was closed for summer vacation when the date to be expired and the suit is filed on the re-opening day hence the suit is in time.

The deft by his W.S. exh. 9 denies the plff's applegations and contends that the plff has not been in possession of the suit site for mofe than 60 years. the site belongs to Govt. under sec. 37 of the Land Revenue Code that the Enquiry held and the decision of the Enquiry officers are corredt and binding on plff hence the suit should be dismissed with costs.

The issues for decision are :-

1. Does plff prove his title to the suit property?
2. Does he prove that he has become owner of the suit property by adverse possession ?
3. Is plff entitled to the declaration and injunction prayed for
4. What order ?

My findings are :-

1. No.
2. No.
3. No.

4. seebelow.

Reasons.

My findings are as above for the reasons recorded in my judgment in the companion C.S.No. 433 of 1944.

Order.

The suit is dismissed with costs.

22-10-45. Sd/ S.M.Bhoj.
Joint Civil Judge(Sr. Dn.)

True Copy

Dist Govt Pleader, Bijapur.

Civil suit No. 433/44.

In the Court of the First Class Sub-Judge, Bijapur.

1. Shivalingappa Salunke — Plff.

1. The Province of Bombay. — Deft.

Herein the pleader for the plffs in suit Nos. 433/44 and 434/44 begs to state as under :-

1. The Enquiry Officer passed an order holding City S.No. 582/5 as part of the subject matter in civil suit no. 433/44 and city S.No. 584/5 which is the subject matter in civil suit No. 434/44 to be encroachments.

2. The Saranjamdar appealed to the District Deputy Collector E.D. Bijapur and the D.D.C. after this suit and suit no. 434/44 were instituted set aside the order of the Enquiry Officer in respect of the above said two sites. City S.Nos. 582 and 584.

3. It is therefore not necessary to proceed with suit No. 434/44 and with regard to the claim in respect of city S.No. 582 in suit no. 434/44

Hence suit no. 434/44 and the claim regarding city S.No. 582 in suit no. 433/44 be dismissed, for non-prosecution.

Sd/ R.S. Deshpande.
Pleader for the plffs.

The other side to say.
15-9-4 . Sd/ S.M. Koj.
C.J. S.Dn.

In C.s.No. 433/4 in the plaint para 8 plff prays for a declaration that he is the owner. In C. .No. 434/44 in the plaint para 6 asserts that Rastas have passed an agreement allowing plff to retain site as plff's own. In both the suits the issues are as to whether the plff is owner of the respective sites and as to whether he has become owner by adverse possession. The Gumast of the Saranjamdar has deposed that plffs are not the owners of the sites but that they are tenants. The plffs now want to adopt that stand and take to non-prosecution of the suits. Plffs therefore have failed to prove their title and hence deft should be awarded his costs.

It is unnecessary to enter into the correctness of the order of D.D.C. as the ownership of Rastas or ownership of Govt over the sites in question is not in issue in C.s. 434/44 and to the part of the claim in c.s. no. 433/44.

Plffs therefore are bound to pay costs of the deft.

15-9-45. sd/ A.C.King di.
D.G.F.

Heard pleaders.

The point as to costs should be argued in view of the claim made above. Sd R.S. Deshpande.

Heard pleaders.

In C.S. no. 434/4 plff claims a declaration that the site in dispute if of his absolute ownership and so also in this suit.

He has failed to prove his title in so far as the acquiescence in the decision of the D.D.C. which is to the effect that the Sarnjamdar is the owner. Hence plff must bear the deft's costs in both the suits.

22-10-

Sd/ S.M. Bhoj.
Civil Judge S.Dn.Bijapur.

True copy

Ahmad

District Govt Pleader, Bijapur.

In the court of the Joint Civil Judge Senior Division? B.japur. 7

At Bijapur.

Civil suit No. 433 of 1944. 9—61

1. Shivalingappa Salunke.

Plff.

Vs.

Deft.

1. The Province of Bombay.

The plff sues for a declaration that the orders of the Eqnury Officer dated 10-3-43 and 31-7-43that the portions of the katta and foot path are an encoachment are illegal unauthorised and ultra vires and plff is the owner of the same and for an injunction against the deft restraining him through his servants from removing them. He aleges that he owns a house in chalta no. 56 of sheet 5 in= ku bar galli at Talikot and the kattas on either of the entrance door are a part of the house. He also owns a shop building on city s. no. 582 of sheet no. 5 in the Bazar galli and foot path adjoining the shop infront as a part of the shop building andis covered by corrogated iron sheets. The city survey officer held under sec. 37 of L.R.Code that part of the kattas was an enroachment as also the foo-t-path infront of the shop and communicated to him that the kattas would be removed and the foot path included in the road. These notices were not served on the plff since he was a detenue under the defence of India Rules. These orders are therefore not binding on him. He was released from jail long after the expiry of one year allowed by the law of limitation from 12-3-43. These orders are illegal and ultra vires and hence the the suit.

Talikot is Inam village of Rastas and all the land in Talikot and all the land in the village Gavthan which under sec. 37 of the Land Revenue Code would vest in Govt is the property of the Rastas. The Govt therefore could not start an enquiry under sec. 37 of the Land Revenue Code as that section has no application to the site in talikot village. The ground below the kattas and the foot path belong to the plff and the kattas are there from the time of the existence of the house. They are in his possession for more than 60 years. The open spaces infront of the shops are also part of the shops and they are in the wahiwat of the plff from more than 60 years. The Rastas have allowed the ground below the kattand foot path to be plff's absolute propetyy. The plff has given the statutory notice which expired on 26-9-1944.

The deft by his W.S. ex. 12 contends that the decision in respect of the encroachment of kattas was communicated to plff on 2-7-1943 and the suit having been filed more than 14

months thereafter is time barred under sec. 37(3) of the L.R. Code read ith Sec. 15 15(2 of the limitation Act. They deny the plff's ownership over the suit sites and plff's possession for more than 60 years. The sites in question are part of the public roads which have been in existence long before the grant of the saranjam. They could not pass to the Saranjamdar by a subsequent grant. These sites are part of the high way which are included in unassessed waste and the same was excluded from grant of the saranjam. They have therefore remained as the property of Govt. City survey has been introduced in the village of Talkot with the consent of the Saranjamdar. The Enquiry Officer has rightly held these sites to be encroachments under sec. 37(2) and his decision is correct and binding on plff and so plff is not entitled to any relief.

The issues as per exh. 14 are :-

1. Does plff prove his title to the suit property ?
2. Does he prove that he has become owner by adverse possesion?
3. Is the suit barred by time as regards the kattas ?
4. Is plff entitled to the injunction and declaration sought?
5. What order ?

My findings are:-

1. No.
2. No.
3. Yes.
4. see below.
5.

Reasons .

This suit abd civil suit nos. 221 an 434 af 1944 were set down for hearing as companion suits. All the evidence has recorded in this suit with the consen of both the parties. I am recording judgment in this suit which will becommon for both The dert in all these suits is the Province of Bombay. The plffs in these suits have got houses and shops in Talikot whis is an Inam village of Rastas of Poona. Admittedly city survey introduced in this village with consent of the saranjamdar vide exs. 29 and exh. 30. That was in September 1939. The plffs have built kattas on either side of their houses and a small space infront of the shops has been covered by corrugated iron sheets. These houxes and shops abut the public roads. The Enquiry officer has held under sec. 37(2) of the L.R.Code that the ground on which the kattas are built and the open space infront of their shops covered by corrugated iron sheets are an encroachment on the Govt road, and has ordered their removal. The plffs' case is that this order of the Enquiry officers are illegal and ultra vires and they pray for an injunction restaining the deft Govt from removing them.

Their case is that Talikot is an Inam village of Rastas and all the land covered by village gavthan which ordinarily vests in Govt under Sec. 37 of the Land Revenue Code is the property of Rastas Sarnjamdar anxd that the Govt could not hold an enquiry as they have done unde sec. 37 of L.R. Code in respect of the sites in the village. They say that the kattas and the foot path are these since they built their houses and shops more than 60 years ago. and that the saranjamdar has acquiesced in the plff's using

the sites which are alleged to be encroachments as their absolute property and therefore the Govt cannot say that they are an encroachment.

The defence is that the sites in dispute are part of the public roads which are in existence even before the grannt of the Saranjam to the Rastas of Poona. They form part of the high ways which are included in unassessed waste which was exkluded from the grant to the Saranjamdar; the sites therefore have remained the property of Govt since the city survey has been introduced in the village of Talikot with the consent of the Saranjamdar the Equity Officer has rightly held under sec. 37(2) of the K.L.R. Code the kattas and the spaces as foot path covered by iron sheets to be encroachments. His decision therefore is correct and binding on plffs. It is not illegal and ultr a vires as contended.

The Saranjamdar preferred an appeal to the District Deputy Collector against the decision of the Enquiry Officer and the Dist Deputy Collector has held and this was subsequent to the filing of these suits that the open spaces infront of the shops are not an encroachment in so far as the Govt had not reserved their owne ship on public roads in the village. Therefore the pleader for the plffs in this suit and c.s. no. 434 of 1944 put in an application at ex. 42 stating that since the Enquiry officer's decision as regards the foot path was held to be wrong he did not wish to proceed so far as their claim to the open spaces infront of the shops were concerned and they should be dismissed for want of prosecution. So that the only important point that remains now for determination is whether the kattas which the plffs in c. s. no. 221 of 1944 hav e built adjoining their houses are an encrachmen upon the public road.

Before considering the evidence on this point it must be stated that the plffs have got a sketch drawn by a pensioned draftsman of the P.W.D. of their houses with the kattas at exh. 40. The sketch show in detail the width of the kattas of steps built infront of their houses and the width of the stones projecting beyond their houses on which the pillars are resting. The Govt pleader is not prepared to admit the correctness of this map for the mere reason that the sketch has been prepared by the plffs to suit their own convenience affer the suits were filed and he therefore urges that it should b e ignored and the city survey map produced by him at ex. 38 should be relied upon. In my opinion the details of the kattas and steps etc of the plffs' houses furnished by exh. 40, will not necess arily be of much help to plff since it is their own case they they have built kattas on the sites which belong to the Rastas and they say that they have been allowed the use of the ground below the kattas as their absolute property. Therefore the question to be considered is whether the plffs have proved that the sites in dispute are not the property of the Government.

I think the plffs have put forth an inconsistent claim and I doubt if theycan claim a declaration for the reasons stated I say inconsistent because they say that the sites in dispute are of the ownership of the Saranjamdar and yet they say that they are the owners of the suits in question and pray for a declaration.

Now coming to th e evidence we find that the plffs have admittedly no documentary evidence to show their title to the suit property. It therefore follows even if it be assumed that these kattas were built along with the houses more than 60 years ago and on this point there is merely the word of the interested parties the evidence of Chanbasappa exh. 41 witness for the plff in this suit being altogether useless , I fail to see how the mere act of user by plffs of a part of what I am immediately going to show a public road would lead to the presumption of title in the i favour

The plff's contention that the land in the village of Talikot is the property of Rastas of Poona and not of the Govt is entirely unfenable. This is a political Saranjam and the presumption is that the Saranjamdar is a grantee of the Royal share of the Revenue only from the lands or village and not of the soil in the absence of express words or necessary implication to the contrary. The plffs havenot produ the sanad granted to the Rastas by British Govt . Instead they have produced extract from Alienation Register ex. 26 in proof of their contention that the grant was of the soil. This document does not help them on the contrary it goes against them. Though Talikot is an alienated village still according to column 20 of this extract what was alienated to the Saranjamdar was only the land revenue which was Rs. 4695 the total acerage of the village was 15250assessed at Rs. 6386 odd. Out of this area 316 acres was unassessed waste and the area of kadim Inamdars was 6000 acres. This unassessed waste and the area of the kadim Inamdar according to column 12 was excluded from grant so that as a result what was alienated was land revenue totalling to Rs. 4700 out of which Rs. 4-15-0 was deducted on account of salami. It appears from exh. 28 whic is an extract of village form no. 1 for the year 1917-18 that the area set apart for public and special purposes which was 316 acres in 1888-1889 as per ex. 26 was reduced to 291 acres by 1917-18- In this area of 316 acres is included the gaothan which is according to exh. 18. 116 acres the other sites set aaart for public purposes being masanwat i. e. burial ground, tank Gayran and roads and paths. It is clear therefore from the plffs' own document exh. 26 that the sites in dispute form part of public roads which are included in unassessed waste which was excluded from the grant of the Saranjamdar They therefore remained the property of the Government.

Now what is the nature of the plff's possession of the sites in dispute. According to their own case they are only making use of the sites in dispute

Accoording to their own case they are only making use of the sites in dispute with the permission of the Saranjamdar. Can a mere user therefore by the plffs of a part of a public road in the form of kattas built on either side of their houses be sufficient to prove or amount to legal possession because their case is that the nature of their possession attracts the presumption described in sec. 110 of the Evidence Act. The answer in my opinion must be given in the negative. Here is admittedly a public road, Those katt s it must be noted do not form part of the houses themselves- They are merely appendages or adjuncts to the houses and thus the plffs began to make use of the public road. Can t be said that such a user of a public road would amount to juridical possession? The case of Hanmantrao vs. The Secretary of State 2 B.L.R. 1111 relied upon by the plffs in proof or their alleged juridical possession by such user does not at all support them. In that case the plffs had purchased an open space in the village by a sale deed and were in possession of it for about 12 years. The Govt ordered eviction and so the plffs brought a suit for a declaration that the place of land belonged to them and sothey should be confirmed in their possession. When the matter went up in appeal to the high court there was a difference of opinion between the order Justice and Whitworth J. The matter was ultimately referred to a third judge who held that sec. 110 of the Evidence act refers to the presumption to be made of ownership based on the circumstances of possession leading to the presumption of title and allows the plff with such prima facie title to claim a decree where superior title is proved on the other side. The plff's possession was not therefore held wrongful as it was based on a prima facie title which must be protected under sec. 110 of the Evidence ct. It is therefore clear from the facts of that case that there the plffs possession was based on a sale deed which is not the case here. Here plff have no documentary evidence at all in proof of their title to the sites in dispute and so it cannot be said that mere long user based on oral evidence would amount to the ir judidical possession. Th ecase of 2 B.L.R. therefore does not help the plff Now that case was considered both in Vasta Vs. The Secretary of State for India 23 23 B.L.R. 238 and Suraji Vs. The Secretary of State for India 39 B.L.R. 216. In the last case the facts

were that the plffs hhad been using apart of the site in a village for tethering cattle and storing krass and on another portion of it he had built an otli. The plff erected a hedge to the north of the site so that it came of the way of its use as a thorough fare. In a suit to recover possession it was held that the recent erection of the hedge was not even when combined plff s evidence of user sufficient to prove or to amount to legal possession and that the evidence and the circumstances of the case did not suffice to prove such possession as would justify an inference of plffs title under sec. 110 of the Evidence Act. It is contended on behalf of the deft relying on thesedecisions that that the plffs user of a part of a public road in the shape of kattas does not lead to a presumption oftitle as contemplated in sec. 110 of the Evidence Act. The plff's reply to this contention is that that katta which they have built are not of temporary nature.They are there ever since the houses were built and more than 60 years ago. Under the circumstances therefore the case of 39 B.L.R. cannot go against them. I do not agree. The case of 2 B.L.R. was distinguished in 39 B.L.R. 816 because there the plff's title was supported by a documentary evidence and under the circumstances po session was held to be founded on the prima facie title. In the 23 B.L.R. case plff came into posse sion of the vacant sit eand immediately afte he built a ho use upon it. About 18 years thereafter the Govt ordered the plff to pass a lease or give up possession of the site. Then the plff sued for a declaration that the site was of his ownership. His suit was dismissed holding that sec.110 did not apply so as to entitle plff to a decree and that the onus of establishing title to the suit property by reason of possession for 60 years still lay upon the plff. The decisions therefore clearly establish that it is not enough for the plffs to show that they are in possession to attract the applicability of s ec. 110. They have to establish that their possession is accompanied with proof of title so as to amount to legal possession That the plff have clearly failed to establish.. =they have no documentary evidence to prove their title and having regard to the nature of the kattas built infront of their houses their mere po session of the sites however long cannot amount to legal possession. and therefore the onus of establishing a superior tiele does not rest on the Govt.

I therefore for these reeasons decide the first two issues against the plffs.

It is contended on behalf of deft that the suit by the present plff not having been filed within 14 months from the date of the service of the order of the Enquiry Officer passed under Sec. 37(2) of the Land Revenue Code it is time barred . I think this contention must be upheld. It is however contended on behalf of the plff that he was kept in jail under the Defence of India Rules and was released a year after 12-3-43 when according to the Enquiry Officer he was communicated of the order passed by him on 10-3-43 hold that the kattas were an encroachment. The said order must be deemed to have been given to plff only if the notice of the order had been given in accordance with the rules made in this behalf by the Governor in council as provided by Cl. 4 of Sec. 37 which rules are to be found at page 17 of Appendix H to the Land Revenue Code (Gupte) 1934 Sept. Edition. Rule 29 requires such notice to be served in the manner prescribed in Sec. 190 of the Land Revenue Code for the service of summons and sec. 190 says that every summons shall be served by tendering or delivering a copy of it to the person summoned or if he cannot be found by affixing a copy of the notice to his house. He contends exh. 35 did not fulfil the requirements of sec. 190 in so far as there was no difficuulty in tracing his whereabouts and serving him with anotice in the jail and therefore it cannot be said that he had due notice of the order passed by the Enquiry Officer under s c. 37(2) of the Land Revenue Code. This contention cannot be upheld. Two modes of service have been laid down in the section. One to deliver a copy of the notice to the person in case he cannot be found the other mode is to affix a copy to some conspicuous part of his residence. In this case the Enquiry Officer adopted the alternati mode as exh. 35 shows . Therefore the plff's complaint has no basis. Now 14 months was the period within which plff should have filed this suit., against the Govt under sec. 37(2) of the L.R. Code with S. 15(2) of the limitation Act. Actually we find he has filed this sui 27 days after the period expired . His suit therefore is time barred.

The plff's contention that the order passed by the Enquiry Officer is illegal and ultra vires has no substance. The City Survey having been introduced in this village the Enquiry held by the Enquiry Officer under Sec. 37 was perfectly in order and his decision is binding on the plff.

In the result the plff is not entitled to the injunction sought.

For the same reasons therefore the companion suit no. 221 of 1944 also fails.

Order.

The suit is dismissed with costs.

22nd October 1945.

sd/ S.M. Bhoj.
Joint Civil Judge Senior Division,
Bijapur.

True Copy

District Govt Pleader,
Bijapur.

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This relates to Bijapur suits Nos.221, 433 and 434 of 1944 which were in respect of encroachments over Govt. land in the village of Talikot (Taluka Muddebihal). In suit No.221 the plaintiff claimed the site under the "Kattas" on either side of his house in Chalta Nos.53 and 54. In suit No.433 the plaintiff claimed 20 square yards of land beneath the "Katta" adjoining his house in Chalta No.56 and 14.7 square yards in front of his shop in Chalta No.582. The plaintiff in suit No.434 claimed 14.3 square yards in front of his shop in Chalta No. ~~434~~ 584. All these sites were declared to be of Govt's owership by the Enquiry Officer in the City Survey Enquiry. The plff's main contention was that Talikot being an "Inam Village" belonging to the Raste family of Poona, all lands in the village which would ordinarily vest in Govt. under section 37 of the Land Revenue Code, were the property of the Rastes of Poona and that for that reason Govt. had no power to order an inquiry under section 37. This was denied by Govt. The defence particularly in suits Nos.433 and 434 was that although Talikot was the village belonging to the Raste Saranjam, the encroached sites formed part of public roads which had been in existence long before the grant of the village by the British to the Saranjamdar and that therefore these lands did not vest in the Saranjamdar but remained the property of Govt. even after the grant. It was further pointed out that these lands formed part of high ways and were part of a general system of roads leading traffic to Bijapur and were dedicated as such by the State before the alienation of the village. They did not therefore pass to the alienee by a subsequent grant even of the soil of the village but that the dedication survived for the benefit of the public.

Fcb put up

It now transpires that the Saranjamdar had appealed to the District Deputy Collector against the Enquiry Officer's orders. The District Deputy Collector is reported to have set aside the Enquiry Officer's order in respect of the sites in Chalta Nos.582 and 584. He held that these sites belonged to the Saranjamdar. Consequently the plff. applied to the Court that the suit No.434 and the claim in respect of Chalta No.582

in suit No.433 should be dismissed for non-prosecution.

The trial Judge dismissed with costs suit No.434 on the ground that the plaintiff having acquiesced in the Dist. Deputy Collector's decision, had failed to prove his title. In suit No.433 he dismissed the claim as regards Chalta No.582 for the same reason i.e. for want of prosecution. But as regards the other claim in that suit viz. land in Chalta No.56, the trial Judge proceeded on merits, accepted the defence of Govt. and dismissed the suit with costs. He agreed with Govt.'s contention that the sites in dispute formed part of public roads which were excluded from the grant to the Saranjamdar and remained the property of Govt. The learned Judge also dismissed with costs suit No.221 for "the reasons recorded in.....judgment in the companion suit No.433".

The result of these findings is curious and somewhat confusing. The case of Govt. was that the disputed sites in all the three suits belonged to them as part of public roads and that they did not belong to the plaintiff or to the Saranjamdar. The learned Judge's order dismissing in toto suit No.434 and a part of the claim in Suit No.433 for want of prosecution amounts to an acceptance of the Saranjamdar's title which was set up by the plff. and denied by the Govt. As regards the rest of the claim in suit No.433 he accepts the case of Govt. The D.G.P. in his letter to the Collector states that "the whole position requires attention as the question affects Govt's title to the land at Talikot." However, as all the three suits are dismissed with costs there will be no decree against Govt. and hence there is no necessity for any appeal.

The proper course at this stage would be for the R.D. to revise under section 211 of the Land Revenue Code the District Deputy Collector's order in favour of the Saranjamdar. For the present however, the Collector may be requested to offer his remarks on the result of the suits and the D.G.P's report.

A.L.R
R.L.A.

Decree in original suit O. 20 Rss6, 7) Form No. no. 1 Appendix D-Sch. 1).

29 87

Decree.

Exh.

In the Court of the Joint Civil Judge(Senior Division)

At Bijapur.

Civil suit No. 221 of 1944.

1. Basalingappa Chanbasappa Kinagiage 55 caste Hindu Lingayat occupation agriculture and trade resident of Sindgi. - Plff.

Vs.

1. The Province of Bombay.

Suit filed on 5-6-1944.

Suit registered on 12-6-44.

Claim Rs. 5/-.

The plff sues as follows :-

1. The plff owns a house in Ch. Nos. 53 and 54 in Kumbar Galli at Talikot in the Muddebihal Taluka Dist Bijapur. To the North of this house adjoining Ch. No. 54 and forming part of it there are kattas on either side of the main entrance door. The Deft has recently started city survey Enquiry at Talikot in the year 1943 purporting to be under section 37 of the Land Revenue Code and on 12-3-1943 the Enquiry Officer made an order that he held the enquiry on 10-3-1943 and that he decided on that same day that the said kattas as shown in the map prepared by him were encroachments.

2. The site covered by the kattas in question and the house in Ch. Nos.53 and 54 form one site and one property and the plffand his predecessors in title are and have been the absolute owners of the site covered by the suit kattas and they have been in open enjoyment of thekattas for more than 60 years

3. The deft is not the owner of the site under the kattas as defined in Section 37 of the Land Revenue Code.

4. Besides Talikot is an Inam village of the Rastas of Poona and all lands which would vest in Government under Section 37 of the Land Revenue Code would vest in the Rastas of Poona Hence section 37 of L.R.R. code has no application to these sites and the deft has absolutely no right to any land what-so-ever at Talikot.

6. The kattas do not abut the road and there is considerable space between the Road and the kattas . The removal of the kattas substantially af-fects the enjoyment of the house . The Road is sufficiently wide and the kattas have at no time obstructed the traffic.

8. The cause of action for the suit arose on 12-3-1943when the order was actually passed by the Enquiry Officer.

9. Notice under section 80 of C.P.C. read with S. 176/and of the following sections of Govt India Act of 1935 was served on the Collector of Bijapur on 6-3-1944. Time for filing the suit expired on 12-5-1944 but the court was closed from 22nd April and hence the suit is filed on the opening day of the court.

The suit is assessed to court fees as unde r:-

The claim for consequential relief is valued at Rs. 6/- and the court fee of Rs. 6-4-0 is paid for jurisdiction and pleader's fees the price of the site under the kattas is Rs. 5/- and the same is the valuation.

The plff prays as under:-

1. That it be declared that the order of the Enquiry Officer dated 12-3-1943 and stated to have been passed on 10-3-1943 declaring the kattas in front of the Plff's house situated in Kumbar Galli at Talikot in Muddebihal taluka Dist Bijapur and situated adjoining at the north of chálta no. 54 as stated in the map prepared by the Enquiry Officer to be wrong fllegal unauthorised and ultra vires and that the plff is the owner of the site under the kattas and by way of consequential relief and an injunction be granted restraining the deft through their servants from removing kattas.

2. The costs of this suit be awarded.

This suit coming on this 22nd day of October 1945 for final disposal before S.M. Bhoj Esqr. Joint Civil Judge (Sr. Dn.) Bijapur in the presence of Mr.R.S. Deshpande pleader for the plff and of Mr. A.C. Angadi G.P. for deft it is ordered and decreed that:-

The suit is dismissed with costs.

Bill of costs.

For plff.		For deft.	
1. Stamp for plaint	6-4-0	1. Stamp for set off of cross suit.	
2. do for power	0-10-0	2. do for power	
3. do for papers. ex.12,15,16,22,25,26,27,28,30,31,32,	2-1-0	3. do for papers. ex.6,7,8,16,17	1-13-0
4. subsistence allowance for witnesses.	21-6-0	4. Subsistence for witnesses.	1-0-0
5. Pleader's fee.	15--0-0	5. Pleader's fees.	15-0-0
6. service of processes.	6-6-0	6. service of process.	
7. Commissioner's fees.		7. commissioner's fee.	
8. Translation fees.		8. Translation fee.	
9.Copying fees		9. Copying fee	

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10. Adjoinrnment costs. 10 Adjoumnment costs.

11. Stamp for application to bring heir of deceased.

Total 51-11-0 Total 37-13-0

Costs disallowed.
On paaint
on pleader's fees.
on process.
on papers (exhs filed). 1-11-0
exs.18,22,25,26,27,28,30,31,32. Balance. 50-0-0

Costs disallowed.
On cross suit
on pleaderis fees.
On process
on papers(exhs.filed). 1-13-0
6,7,8,16,17. Balance. 36-0-0

Given under my hand and the seal of the court this 22nd day of October of 1945.

sd/P.B.Dani
Clerk.

Sd/S.M.Bhoj
Joint Civil Judge(Sr. Dn.).
19-11 -45.

Plff's Pleader:-
Deft's pleader:-

Parties to this litigation are hereby informed that the documents if any produced by them if not taken (back) are liable to be destroyed (will be destroyed) after the disposal of the appeal if any preferred.

True copy

District Govt Pleader,Bijapur.

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Civil suit No.434 of1944.

In the Court of the F.C. Sub-Judge, Bijapur.

1. Baslingappa Chanbasappa Kinagi
age 5[illegible] caste Hindu Lingayat agriculturist
trader resident of Jindgi. ..Plff.

Vs..

1. The Province of Bombay.

for jurisdiction Rs. 200/-
court fee Rs. 6-4-0

x x x x

Plff's suit is dismissed with costs vide exh. 42 in C.S. No. 433/44.

22-10-45.

sd/ S.M.Bhoj.
Jt. C.J.-Sr. Dn.

ಸಾಕ್ಷಿಗಳು.

ಫಿರ್ಯಾದಿ ಪರವಾಗಿ.

1. ಬಸಲಿಂಗಪ್ಪ ಚನ್ನಬಸಪ್ಪ ಕಿನಗಿ. ವ-೫೦. ಲಿಂಗಾಯತ ವ್ಯವಸಾಯಗಾರ ವರ್ತಕ ಸಾ|| ಜಿಂದಗಿ. ಎಕ್ಸ ನಂ|| ೧, ೨, ೫, ೬, ೭, ೮, ೯, ೧೦, ೧೧, ೧೨, ೧೩, ೧೪, ೧೫, ೧೬, ೧೭, ೧೮, ೧೯, ೨೦, ೨೧, ೨೨, ೨೩, ೨೪, ೨೫, ೨೬, ೨೭, ೨೮, ೨೯, ೩೦, ೩೧, ೩೨, ೩೩, ೩೪, ೩೫, ೩೬, ೩೭, ೩೮, ೩೯, ೪೦, ೪೧, ೪೨, ೪೩, ೪೪, ೪೫, ೪೬, ೪೭, ೪೮, ೪೯, ೫೦, ೫೧, ೫೨, ೫೩, ೫೪, ೫೫, ೫೬, ೫೭, ೫೮, ೫೯, ೬೦, ೬೧, ೬೨, ೬೩, ೬೪, ೬೫, ೬೬, ೬೭, ೬೮, ೬೯, ೭೦, ೭೧, ೭೨, ೭೩, ೭೪, ೭೫, ೭೬, ೭೭, ೭೮, ೭೯, ೮೦, ೮೧, ೮೨, ೮೩, ೮೪, ೮೫, ೮೬, ೮೭, ೮೮, ೮೯, ೯೦, ೯೧, ೯೨, ೯೩, ೯೪, ೯೫, ೯೬, ೯೭, ೯೮, ೯೯, ೧೦೦, ೧೦೧, ೧೦೨, ೧೦೩, ೧೦೪, ೧೦೫, ೧೦೬, ೧೦೭, ೧೦೮, ೧೦೯, ೧೧೦, ೧೧೧, ೧೧೨, ೧೧೩, ೧೧೪, ೧೧೫, ೧೧೬, ೧೧೭, ೧೧೮, ೧೧೯, ೧೨೦, ೧೨೧, ೧೨೨, ೧೨೩, ೧೨೪, ೧೨೫, ೧೨೬, ೧೨೭, ೧೨೮, ೧೨೯, ೧೩೦, ೧೩೧, ೧೩೨, ೧೩೩, ೧೩೪, ೧೩೫, ೧೩೬, ೧೩೭, ೧೩೮, ೧೩೯, ೧೪೦, ೧೪೧, ೧೪೨, ೧೪೩, ೧೪೪, ೧೪೫, ೧೪೬, ೧೪೭, ೧೪೮, ೧೪೯, ೧೫೦, ೧೫೧, ೧೫೨, ೧೫೩, ೧೫೪, ೧೫೫, ೧೫೬, ೧೫೭, ೧೫೮, ೧೫೯, ೧೬೦, ೧೬೧, ೧೬೨, ೧೬೩, ೧೬೪, ೧೬೫, ೧೬೬, ೧೬೭, ೧೬೮, ೧೬೯, ೧೭೦, ೧೭೧, ೧೭೨, ೧೭೩, ೧೭೪, ೧೭೫, ೧೭೬, ೧೭೭, ೧೭೮, ೧೭೯, ೧೮೦, ೧೮೧, ೧೮೨, ೧೮೩, ೧೮೪, ೧೮೫, ೧೮೬, ೧೮೭, ೧೮೮, ೧೮೯, ೧೯೦, ೧೯೧, ೧೯೨, ೧೯೩, ೧೯೪, ೧೯೫, ೧೯೬, ೧೯೭, ೧೯೮, ೧೯೯, ೨೦೦, ೨೦೧, ೨೦೨, ೨೦೩, ೨೦೪, ೨೦೫, ೨೦೬, ೨೦೭, ೨೦೮, ೨೦೯, ೨೧೦, ೨೧೧, ೨೧೨, ೨೧೩, ೨೧೪, ೨೧೫, ೨೧೬, ೨೧೭, ೨೧೮, ೨೧೯, ೨೨೦, ೨೨೧, ೨೨೨, ೨೨೩, ೨೨೪, ೨೨೫, ೨೨೬, ೨೨೭, ೨೨೮, ೨೨೯, ೨೩೦, ೨೩೧, ೨೩೨, ೨೩೩, ೨೩೪, ೨೩೫, ೨೩೬, ೨೩೭, ೨೩೮, ೨೩೯, ೨೪೦, ೨೪೧, ೨೪೨, ೨೪೩, ೨೪೪, ೨೪೫, ೨೪೬, ೨೪೭, ೨೪೮, ೨೪೯, ೨೫೦, ೨೫೧, ೨೫೨, ೨೫೩, ೨೫೪, ೨೫೫, ೨೫೬, ೨೫೭, ೨೫೮, ೨೫೯, ೨೬೦, ೨೬೧, ೨೬೨, ೨೬೩, ೨೬೪, ೨೬೫, ೨೬೬, ೨೬೭, ೨೬೮, ೨೬೯, ೨೭೦, ೨೭೧, ೨೭೨, ೨೭೩, ೨೭೪, ೨೭೫, ೨೭೬, ೨೭೭, ೨೭೮, ೨೭೯, ೨೮೦, ೨೮೧, ೨೮೨, ೨೮೩, ೨೮೪, ೨೮೫, ೨೮೬, ೨೮೭, ೨೮೮, ೨೮೯, ೨೯೦, ೨೯೧, ೨೯೨, ೨೯೩, ೨೯೪, ೨೯೫, ೨೯೬, ೨೯೭, ೨೯೮, ೨೯೯, ೩೦೦, ೩೦೧, ೩೦೨, ೩೦೩, ೩೦೪, ೩೦೫, ೩೦೬, ೩೦೭, ೩೦೮, ೩೦೯, ೩೧೦, ೩೧೧, ೩೧೨, ೩೧೩, ೩೧೪, ೩೧೫, ೩೧೬, ೩೧೭, ೩೧೮, ೩೧೯, ೩೨೦, ೩೨೧, ೩೨೨, ೩೨೩, ೩೨೪, ೩೨೫, ೩೨೬, ೩೨೭, ೩೨೮, ೩೨೯, ೩೩೦, ೩೩೧, ೩೩೨, ೩೩೩, ೩೩೪, ೩೩೫, ೩೩೬, ೩೩೭, ೩೩೮, ೩೩೯, ೩೪೦, ೩೪೧, ೩೪೨, ೩೪೩, ೩೪೪, ೩೪೫, ೩೪೬, ೩೪೭, ೩೪೮, ೩೪೯, ೩೫೦, ೩೫೧, ೩೫೨, ೩೫೩, ೩೫೪, ೩೫೫, ೩೫೬, ೩೫೭, ೩೫೮, ೩೫೯, ೩೬೦, ೩೬೧, ೩೬೨, ೩೬೩, ೩೬೪, ೩೬೫, ೩೬೬, ೩೬೭, ೩೬೮, ೩೬೯, ೩೭೦, ೩೭೧, ೩೭೨, ೩೭೩, ೩೭೪, ೩೭೫, ೩೭೬, ೩೭೭, ೩೭೮, ೩೭೯, ೩೮೦, ೩೮೧, ೩೮೨, ೩೮೩, ೩೮೪, ೩೮೫, ೩೮೬, ೩೮೭, ೩೮೮, ೩೮೯, ೩೯೦, ೩೯೧, ೩೯೨, ೩೯೩, ೩೯೪, ೩೯೫, ೩೯೬, ೩೯೭, ೩೯೮, ೩೯೯, ೪೦೦, ೪೦೧, ೪೦೨, ೪೦೩, ೪೦೪, ೪೦೫, ೪೦೬, ೪೦೭, ೪೦೮, ೪೦೯, ೪೧೦, ೪೧೧, ೪೧೨, ೪೧೩, ೪೧೪, ೪೧೫, ೪೧೬, ೪೧೭, ೪೧೮, ೪೧೯, ೪೨೦, ೪೨೧, ೪೨೨, ೪೨೩, ೪೨೪, ೪೨೫, ೪೨೬, ೪೨೭, ೪೨೮, ೪೨೯, ೪೩೦, ೪೩೧, ೪೩೨, ೪೩೩, ೪೩೪, ೪೩೫, ೪೩೬, ೪೩೭, ೪೩೮, ೪೩೯, ೪೪೦, ೪೪೧, ೪೪೨, ೪೪೩, ೪೪೪, ೪೪೫, ೪೪೬, ೪೪೭, ೪೪೮, ೪೪೯, ೪೫೦, ೪೫೧, ೪೫೨, ೪೫೩, ೪೫೪, ೪೫೫, ೪೫೬, ೪೫೭, ೪೫೮, ೪೫೯, ೪೬೦, ೪೬೧, ೪೬೨, ೪೬೩, ೪೬೪, ೪೬೫, ೪೬೬, ೪೬೭, ೪೬೮, ೪೬೯, ೪೭೦, ೪೭೧, ೪೭೨, ೪೭೩, ೪೭೪, ೪೭೫, ೪೭೬, ೪೭೭, ೪೭೮, ೪೭೯, ೪೮೦, ೪೮೧, ೪೮೨, ೪೮೩, ೪೮೪, ೪೮೫, ೪೮೬, ೪೮೭, ೪೮೮, ೪೮೯, ೪೯೦, ೪೯೧, ೪೯೨, ೪೯೩, ೪೯೪, ೪೯೫, ೪೯೬, ೪೯೭, ೪೯೮, ೪೯೯, ೫೦೦, ೫೦೧, ೫೦೨, ೫೦೩, ೫೦೪, ೫೦೫, ೫೦೬, ೫೦೭, ೫೦೮, ೫೦೯, ೫೧೦, ೫೧೧, ೫೧೨, ೫೧೩, ೫೧೪, ೫೧೫, ೫೧೬, ೫೧೭, ೫೧೮, ೫೧೯, ೫೨೦, ೫೨೧, ೫೨೨, ೫೨೩, ೫೨೪, ೫೨೫, ೫೨೬, ೫೨೭, ೫೨೮, ೫೨೯, ೫೩೦, ೫೩೧, ೫೩೨, ೫೩೩, ೫೩೪, ೫೩೫, ೫೩೬, ೫೩೭, ೫೩೮, ೫೩೯, ೫೪೦, ೫೪೧, ೫೪೨, ೫೪೩, ೫೪೪, ೫೪೫, ೫೪೬, ೫೪೭, ೫೪೮, ೫೪೯, ೫೫೦, ೫೫೧, ೫೫೨, ೫೫೩, ೫೫೪, ೫೫೫, ೫೫೬, ೫೫೭, ೫೫೮, ೫೫೯, ೫೬೦, ೫೬೧, ೫೬೨, ೫೬೩, ೫೬೪, ೫೬೫, ೫೬೬, ೫೬೭, ೫೬೮, ೫೬೯, ೫೭೦, ೫೭೧, ೫೭೨, ೫೭೩, ೫೭೪, ೫೭೫, ೫೭೬, ೫೭೭, ೫೭೮, ೫೭೯, ೫೮೦, ೫೮೧, ೫೮೨, ೫೮೩, ೫೮೪, ೫೮೫, ೫೮೬, ೫೮೭, ೫೮೮, ೫೮೯, ೫೯೦, ೫೯೧, ೫೯೨, ೫೯೩, ೫೯೪, ೫೯೫, ೫೯೬, ೫೯೭, ೫೯೮, ೫೯೯, ೬೦೦, ೬೦೧, ೬೦೨, ೬೦೩, ೬೦೪, ೬೦೫, ೬೦೬, ೬೦೭, ೬೦೮, ೬೦೯, ೬೧೦, ೬೧೧, ೬೧೨, ೬೧೩, ೬೧೪, ೬೧೫, ೬೧೬, ೬೧೭, ೬೧೮, ೬೧೯, ೬೨೦, ೬೨೧, ೬೨೨, ೬೨೩, ೬೨೪, ೬೨೫, ೬೨೬, ೬೨೭, ೬೨೮, ೬೨೯, ೬೩೦, ೬೩೧, ೬೩೨, ೬೩೩, ೬೩೪, ೬೩೫, ೬೩೬, ೬೩೭, ೬೩೮, ೬೩೯, ೬೪೦, ೬೪೧, ೬೪೨, ೬೪೩, ೬೪೪, ೬೪೫, ೬೪೬, ೬೪೭, ೬೪೮, ೬೪೯, ೬೫೦, ೬೫೧, ೬೫೨, ೬೫೩, ೬೫೪, ೬೫೫, ೬೫೬, ೬೫೭, ೬೫೮, ೬೫೯, ೬೬೦, ೬೬೧, ೬೬೨, ೬೬೩, ೬೬೪, ೬೬೫, ೬೬೬, ೬೬೭, ೬೬೮, ೬೬೯, ೬೭೦, ೬೭೧, ೬೭೨, ೬೭೩, ೬೭೪, ೬೭೫, ೬೭೬, ೬೭೭, ೬೭೮, ೬೭೯, ೬೮೦, ೬೮೧, ೬೮೨, ೬೮೩, ೬೮೪, ೬೮೫, ೬೮೬, ೬೮೭, ೬೮೮, ೬೮೯, ೬೯೦, ೬೯೧, ೬೯೨, ೬೯೩, ೬೯೪, ೬೯೫, ೬೯೬, ೬೯೭, ೬೯೮, ೬೯೯, ೭೦೦, ೭೦೧, ೭೦೨, ೭೦೩, ೭೦೪, ೭೦೫, ೭೦೬, ೭೦೭, ೭೦೮, ೭೦೯, ೭೧೦, ೭೧೧, ೭೧೨, ೭೧೩, ೭೧೪, ೭೧೫, ೭೧೬, ೭೧೭, ೭೧೮, ೭೧೯, ೭೨೦, ೭೨೧, ೭೨೨, ೭೨೩, ೭೨೪, ೭೨೫, ೭೨೬, ೭೨೭, ೭೨೮, ೭೨೯, ೭೩೦, ೭೩೧, ೭೩೨, ೭೩೩, ೭೩೪, ೭೩೫, ೭೩೬, ೭೩೭, ೭೩೮, ೭೩೯, ೭೪೦, ೭೪೧, ೭೪೨, ೭೪೩, ೭೪೪, ೭೪೫, ೭೪೬, ೭೪೭, ೭೪೮, ೭೪೯, ೭೫೦, ೭೫೧, ೭೫೨, ೭೫೩, ೭೫೪, ೭೫೫, ೭೫೬, ೭೫೭, ೭೫೮, ೭೫೯, ೭೬೦, ೭೬೧, ೭೬೨, ೭೬೩, ೭೬೪, ೭೬೫, ೭೬೬, ೭೬೭, ೭೬೮, ೭೬೯, ೭೭೦, ೭೭೧, ೭೭೨, ೭೭೩, ೭೭೪, ೭೭೫, ೭೭೬, ೭೭೭, ೭೭೮, ೭೭೯, ೭೮೦, ೭೮೧, ೭೮೨, ೭೮೩, ೭೮೪, ೭೮೫, ೭೮೬, ೭೮೭, ೭೮೮, ೭೮೯, ೭೯೦, ೭೯೧, ೭೯೨, ೭೯೩, ೭೯೪, ೭೯೫, ೭೯೬, ೭೯೭, ೭೯೮, ೭೯೯, ೮೦೦, ೮೦೧, ೮೦೨, ೮೦೩, ೮೦೪, ೮೦೫, ೮೦೬, ೮೦೭, ೮೦೮, ೮೦೯, ೮೧೦, ೮೧೧, ೮೧೨, ೮೧೩, ೮೧೪, ೮೧೫, ೮೧೬, ೮೧೭, ೮೧೮, ೮೧೯, ೮೨೦, ೮೨೧, ೮೨೨, ೮೨೩, ೮೨೪, ೮೨೫, ೮೨೬, ೮೨೭, ೮೨೮, ೮೨೯, ೮೩೦, ೮೩೧, ೮೩೨, ೮೩೩, ೮೩೪, ೮೩೫, ೮೩೬, ೮೩೭, ೮೩೮, ೮೩೯, ೮೪೦, ೮೪೧, ೮೪೨, ೮೪೩, ೮೪೪, ೮೪೫, ೮೪೬, ೮೪೭, ೮೪೮, ೮೪೯, ೮೫೦, ೮೫೧, ೮೫೨, ೮೫೩, ೮೫೪, ೮೫೫, ೮೫೬, ೮೫೭, ೮೫೮, ೮೫೯, ೮೬೦, ೮೬೧, ೮೬೨, ೮೬೩, ೮೬೪, ೮೬೫, ೮೬೬, ೮೬೭, ೮೬೮, ೮೬೯, ೮೭೦, ೮೭೧, ೮೭೨, ೮೭೩, ೮೭೪, ೮೭೫, ೮೭೬, ೮೭೭, ೮೭೮, ೮೭೯, ೮೮೦, ೮೮೧, ೮೮೨, ೮೮೩, ೮೮೪, ೮೮೫, ೮೮೬, ೮೮೭, ೮೮೮, ೮೮೯, ೮೯೦, ೮೯೧, ೮೯೨, ೮೯೩, ೮೯೪, ೮೯೫, ೮೯೬, ೮೯೭, ೮೯೮, ೮೯೯, ೯೦೦, ೯೦೧, ೯೦೨, ೯೦೩, ೯೦೪, ೯೦೫, ೯೦೬, ೯೦೭, ೯೦೮, ೯೦೯, ೯೧೦, ೯೧೧, ೯೧೨, ೯೧೩, ೯೧೪, ೯೧೫, ೯೧೬, ೯೧೭, ೯೧೮, ೯೧೯, ೯೨೦, ೯೨೧, ೯೨೨, ೯೨೩, ೯೨೪, ೯೨೫, ೯೨೬, ೯೨೭, ೯೨೮, ೯೨೯, ೯೩೦, ೯೩೧, ೯೩೨, ೯೩೩, ೯೩೪, ೯೩೫, ೯೩೬, ೯೩೭, ೯೩೮, ೯೩೯, ೯೪೦, ೯೪೧, ೯೪೨, ೯೪೩, ೯೪೪, ೯೪೫, ೯೪೬, ೯೪೭, ೯೪೮, ೯೪೯, ೯೫೦, ೯೫೧, ೯೫೨, ೯೫೩, ೯೫೪, ೯೫೫, ೯೫೬, ೯೫೭, ೯೫೮, ೯೫೯, ೯೬೦, ೯೬೧, ೯೬೨, ೯೬೩, ೯೬೪, ೯೬೫, ೯೬೬, ೯೬೭, ೯೬೮, ೯೬೯, ೯೭೦, ೯೭೧, ೯೭೨, ೯೭೩, ೯೭೪, ೯೭೫, ೯೭೬, ೯೭೭, ೯೭೮, ೯೭೯, ೯೮೦, ೯೮೧, ೯೮೨, ೯೮೩, ೯೮೪, ೯೮೫, ೯೮೬, ೯೮೭, ೯೮೮, ೯೮೯, ೯೯೦, ೯೯೧, ೯೯೨, ೯೯೩, ೯೯೪, ೯೯೫, ೯೯೬, ೯೯೭, ೯೯೮, ೯೯೯, ೧೦೦೦.

2. ಬಿಳಿಯಪ್ಪ ಚನ್ನಬಸಪ್ಪ ಕಿನಗಿ. ವ-೦೦. ಎಕ್ಸ ನಂ|| ೩, ೪, ೧೧, ೧೨, ೧೩, ೧೪, ೧೫, ೧೬, ೧೭, ೧೮, ೧೯, ೨೦, ೨೧, ೨೨, ೨೩, ೨೪, ೨೫, ೨೬, ೨೭, ೨೮, ೨೯, ೩೦, ೩೧, ೩೨, ೩೩, ೩೪, ೩೫, ೩೬, ೩೭, ೩೮, ೩೯, ೪೦, ೪೧, ೪೨, ೪೩, ೪೪, ೪೫, ೪೬, ೪೭, ೪೮, ೪೯, ೫೦, ೫೧, ೫೨, ೫೩, ೫೪, ೫೫, ೫೬, ೫೭, ೫೮, ೫೯, ೬೦, ೬೧, ೬೨, ೬೩, ೬೪, ೬೫, ೬೬, ೬೭, ೬೮, ೬೯, ೭೦, ೭೧, ೭೨, ೭೩, ೭೪, ೭೫, ೭೬, ೭೭, ೭೮, ೭೯, ೮೦, ೮೧, ೮೨, ೮೩, ೮೪, ೮೫, ೮೬, ೮೭, ೮೮, ೮೯, ೯೦, ೯೧, ೯೨, ೯೩, ೯೪, ೯೫, ೯೬, ೯೭, ೯೮, ೯೯, ೧೦೦, ೧೦೧, ೧೦೨, ೧೦೩, ೧೦೪, ೧೦೫, ೧೦೬, ೧೦೭, ೧೦೮, ೧೦೯, ೧೧೦, ೧೧೧, ೧೧೨, ೧೧೩, ೧೧೪, ೧೧೫, ೧೧೬, ೧೧೭, ೧೧೮, ೧೧೯, ೧೨೦, ೧೨೧, ೧೨೨, ೧೨೩, ೧೨೪, ೧೨೫, ೧೨೬, ೧೨೭, ೧೨೮, ೧೨೯, ೧೩೦, ೧೩೧, ೧೩೨, ೧೩೩, ೧೩೪, ೧೩೫, ೧೩೬, ೧೩೭, ೧೩೮, ೧೩೯, ೧೪೦, ೧೪೧, ೧೪೨, ೧೪೩, ೧೪೪, ೧೪೫, ೧೪೬, ೧೪೭, ೧೪೮, ೧೪೯, ೧೫೦, ೧೫೧, ೧೫೨, ೧೫೩, ೧೫೪, ೧೫೫, ೧೫೬, ೧೫೭, ೧೫೮, ೧೫೯, ೧೬೦, ೧೬೧, ೧೬೨, ೧೬೩, ೧೬೪, ೧೬೫, ೧೬೬, ೧೬೭, ೧೬೮, ೧೬೯, ೧೭೦, ೧೭೧, ೧೭೨, ೧೭೩, ೧೭೪, ೧೭೫, ೧೭೬, ೧೭೭, ೧೭೮, ೧೭೯, ೧೮೦, ೧೮೧, ೧೮೨, ೧೮೩, ೧೮೪, ೧೮೫, ೧೮೬, ೧೮೭, ೧೮೮, ೧೮೯, ೧೯೦, ೧೯೧, ೧೯೨, ೧೯೩, ೧೯೪, ೧೯೫, ೧೯೬, ೧೯೭, ೧೯೮, ೧೯೯, ೨೦೦, ೨೦೧, ೨೦೨, ೨೦೩, ೨೦೪, ೨೦೫, ೨೦೬, ೨೦೭, ೨೦೮, ೨೦೯, ೨೧೦, ೨೧೧, ೨೧೨, ೨೧೩, ೨೧೪, ೨೧೫, ೨೧೬, ೨೧೭, ೨೧೮, ೨೧೯, ೨೨೦, ೨೨೧, ೨೨೨, ೨೨೩, ೨೨೪, ೨೨೫, ೨೨೬, ೨೨೭, ೨೨೮, ೨೨೯, ೨೩೦, ೨೩೧, ೨೩೨, ೨೩೩, ೨೩೪, ೨೩೫, ೨೩೬, ೨೩೭, ೨೩೮, ೨೩೯, ೨೪೦, ೨೪೧, ೨೪೨, ೨೪೩, ೨೪೪, ೨೪೫, ೨೪೬, ೨೪೭, ೨೪೮, ೨೪೯, ೨೫೦, ೨೫೧, ೨೫೨, ೨೫೩, ೨೫೪, ೨೫೫, ೨೫೬, ೨೫೭, ೨೫೮, ೨೫೯, ೨೬೦, ೨೬೧, ೨೬೨, ೨೬೩, ೨೬೪, ೨೬೫, ೨೬೬, ೨೬೭, ೨೬೮, ೨೬೯, ೨೭೦, ೨೭೧, ೨೭೨, ೨೭೩, ೨೭೪, ೨೭೫, ೨೭೬, ೨೭೭, ೨೭೮, ೨೭೯, ೨೮೦, ೨೮೧, ೨೮೨, ೨೮೩, ೨೮೪, ೨೮೫, ೨೮೬, ೨೮೭, ೨೮೮, ೨೮೯, ೨೯೦, ೨೯೧, ೨೯೨, ೨೯೩, ೨೯೪, ೨೯೫, ೨೯೬, ೨೯೭, ೨೯೮, ೨೯೯, ೩೦೦, ೩೦೧, ೩೦೨, ೩೦೩, ೩೦೪, ೩೦೫, ೩೦೬, ೩೦೭, ೩೦೮, ೩೦೯, ೩೧೦, ೩೧೧, ೩೧೨, ೩೧೩, ೩೧೪, ೩೧೫, ೩೧೬, ೩೧೭, ೩೧೮, ೩೧೯, ೩೨೦, ೩೨೧, ೩೨೨, ೩೨೩, ೩೨೪, ೩೨೫, ೩೨೬, ೩೨೭, ೩೨೮, ೩೨೯, ೩೩೦, ೩೩೧, ೩೩೨, ೩೩೩, ೩೩೪, ೩೩೫, ೩೩೬, ೩೩೭, ೩೩೮, ೩೩೯, ೩೪೦, ೩೪೧, ೩೪೨, ೩೪೩, ೩೪೪, ೩೪೫, ೩೪೬, ೩೪೭, ೩೪೮, ೩೪೯, ೩೫೦, ೩೫೧, ೩೫೨, ೩೫೩, ೩೫೪, ೩೫೫, ೩೫೬, ೩೫೭, ೩೫೮, ೩೫೯, ೩೬೦, ೩೬೧, ೩೬೨, ೩೬೩, ೩೬೪, ೩೬೫, ೩೬೬, ೩೬೭, ೩೬೮, ೩೬೯, ೩೭೦, ೩೭೧, ೩೭೨, ೩೭೩, ೩೭೪, ೩೭೫, ೩೭೬, ೩೭೭, ೩೭೮, ೩೭೯, ೩೮೦, ೩೮೧, ೩೮೨, ೩೮೩, ೩೮೪, ೩೮೫, ೩೮೬, ೩೮೭, ೩೮೮, ೩೮೯, ೩೯೦, ೩೯೧, ೩೯೨, ೩೯೩, ೩೯೪, ೩೯೫, ೩೯೬, ೩೯೭, ೩೯೮, ೩೯೯, ೪೦೦, ೪೦೧, ೪೦೨, ೪೦೩, ೪೦೪, ೪೦೫, ೪೦೬, ೪೦೭, ೪೦೮, ೪೦೯, ೪೧೦, ೪೧೧, ೪೧೨, ೪೧೩, ೪೧೪, ೪೧೫, ೪೧೬, ೪೧೭, ೪೧೮, ೪೧೯, ೪೨೦, ೪೨೧, ೪೨೨, ೪೨೩, ೪೨೪, ೪೨೫, ೪೨೬, ೪೨೭, ೪೨೮, ೪೨೯, ೪೩೦, ೪೩೧, ೪೩೨, ೪೩೩, ೪೩೪, ೪೩೫, ೪೩೬, ೪೩೭, ೪೩೮, ೪೩೯, ೪೪೦, ೪೪೧, ೪೪೨, ೪೪೩, ೪೪೪, ೪೪೫, ೪೪೬, ೪೪೭, ೪೪೮, ೪೪೯, ೪೫೦, ೪೫೧, ೪೫೨, ೪೫೩, ೪೫೪, ೪೫೫, ೪೫೬, ೪೫೭, ೪೫೮, ೪೫೯, ೪೬೦, ೪೬೧, ೪೬೨, ೪೬೩, ೪೬೪, ೪೬೫, ೪೬೬, ೪೬೭, ೪೬೮, ೪೬೯, ೪೭೦, ೪೭೧, ೪೭೨, ೪೭೩, ೪೭೪, ೪೭೫, ೪೭೬, ೪೭೭, ೪೭೮, ೪೭೯, ೪೮೦, ೪೮೧, ೪೮೨, ೪೮೩, ೪೮೪, ೪೮೫, ೪೮೬, ೪೮೭, ೪೮೮, ೪೮೯, ೪೯೦, ೪೯೧, ೪೯೨, ೪೯೩, ೪೯೪, ೪೯೫, ೪೯೬, ೪೯೭, ೪೯೮, ೪೯೯, ೫೦೦, ೫೦೧, ೫೦೨, ೫೦೩, ೫೦೪, ೫೦೫, ೫೦೬, ೫೦೭, ೫೦೮, ೫೦೯, ೫೧೦, ೫೧೧, ೫೧೨, ೫೧೩, ೫೧೪, ೫೧೫, ೫೧೬, ೫೧೭, ೫೧೮, ೫೧೯, ೫೨೦, ೫೨೧, ೫೨೨, ೫೨೩, ೫೨೪, ೫೨೫, ೫೨೬, ೫೨೭, ೫೨೮, ೫೨೯, ೫೩೦, ೫೩೧, ೫೩೨, ೫೩೩, ೫೩೪, ೫೩೫, ೫೩೬, ೫೩೭, ೫೩೮, ೫೩೯, ೫೪೦, ೫೪೧, ೫೪೨, ೫೪೩, ೫೪೪, ೫೪೫, ೫೪೬, ೫೪೭, ೫೪೮, ೫೪೯, ೫೫೦, ೫೫೧, ೫೫೨, ೫೫೩, ೫೫೪, ೫೫೫, ೫೫೬, ೫೫೭, ೫೫೮, ೫೫೯, ೫೬೦, ೫೬೧, ೫೬೨, ೫೬೩, ೫೬೪, ೫೬೫, ೫೬೬, ೫೬೭, ೫೬೮, ೫೬೯, ೫೭೦, ೫೭೧, ೫೭೨, ೫೭೩, ೫೭೪, ೫೭೫, ೫೭೬, ೫೭೭, ೫೭೮, ೫೭೯, ೫೮೦, ೫೮೧, ೫೮೨, ೫೮೩, ೫೮೪, ೫೮೫, ೫೮೬, ೫೮೭, ೫೮೮, ೫೮೯, ೫೯೦, ೫೯೧, ೫೯೨, ೫೯೩, ೫೯೪, ೫೯೫, ೫೯೬, ೫೯೭, ೫೯೮, ೫೯೯, ೬೦೦, ೬೦೧, ೬೦೨, ೬೦೩, ೬೦೪, ೬೦೫, ೬೦೬, ೬೦೭, ೬೦೮, ೬೦೯, ೬೧೦, ೬೧೧, ೬೧೨, ೬೧೩, ೬೧೪, ೬೧೫, ೬೧೬, ೬೧೭, ೬೧೮, ೬೧೯, ೬೨೦, ೬೨೧, ೬೨೨, ೬೨೩, ೬೨೪, ೬೨೫, ೬೨೬, ೬೨೭, ೬೨೮, ೬೨೯, ೬೩೦, ೬೩೧, ೬೩೨, ೬೩೩, ೬೩೪, ೬೩೫, ೬೩೬, ೬೩೭, ೬೩೮, ೬೩೯, ೬೪೦, ೬೪೧, ೬೪೨, ೬೪೩, ೬೪೪, ೬೪೫, ೬೪೬, ೬೪೭, ೬೪೮, ೬೪೯, ೬೫೦, ೬೫೧, ೬೫೨, ೬೫೩, ೬೫೪, ೬೫೫, ೬೫೬, ೬೫೭, ೬೫೮, ೬೫೯, ೬೬೦, ೬೬೧, ೬೬೨, ೬೬೩, ೬೬೪, ೬೬೫, ೬೬೬, ೬೬೭, ೬೬೮, ೬೬೯, ೬೭೦, ೬೭೧, ೬೭೨, ೬೭೩, ೬೭೪, ೬೭೫, ೬೭೬, ೬೭೭, ೬೭೮, ೬೭೯, ೬೮೦, ೬೮೧, ೬೮೨, ೬೮೩, ೬೮೪, ೬೮೫, ೬೮೬, ೬೮೭, ೬೮೮, ೬೮೯, ೬೯೦, ೬೯೧, ೬೯೨, ೬೯೩, ೬೯೪, ೬೯೫, ೬೯೬, ೬೯೭, ೬೯೮, ೬೯೯, ೭೦೦, ೭೦೧, ೭೦೨, ೭೦೩, ೭೦೪, ೭೦೫, ೭೦೬, ೭೦೭, ೭೦೮, ೭೦೯, ೭೧೦, ೭೧೧, ೭೧೨, ೭೧೩, ೭೧೪, ೭೧೫, ೭೧೬, ೭೧೭, ೭೧೮, ೭೧೯, ೭೨೦, ೭೨೧, ೭೨೨, ೭೨೩, ೭೨೪, ೭೨೫, ೭೨೬, ೭೨೭, ೭೨೮, ೭೨೯, ೭೩೦, ೭೩೧, ೭೩೨, ೭೩೩, ೭೩೪, ೭೩೫, ೭೩೬, ೭೩೭, ೭೩೮, ೭೩೯, ೭೪೦, ೭೪೧, ೭೪೨, ೭೪೩, ೭೪೪, ೭೪೫, ೭೪೬, ೭೪೭, ೭೪೮, ೭೪೯, ೭೫೦, ೭೫೧, ೭೫೨, ೭೫೩, ೭೫೪, ೭೫೫, ೭೫೬, ೭೫೭, ೭೫೮, ೭೫೯, ೭೬೦, ೭೬೧, ೭೬೨, ೭೬೩, ೭೬೪, ೭೬೫, ೭೬೬, ೭೬೭, ೭೬೮, ೭೬೯, ೭೭೦, ೭೭೧, ೭೭೨, ೭೭೩, ೭೭೪, ೭೭೫, ೭೭೬, ೭೭೭, ೭೭೮, ೭೭೯, ೭೮೦, ೭೮೧, ೭೮೨, ೭೮೩, ೭೮೪, ೭೮೫, ೭೮೬, ೭೮೭, ೭೮೮, ೭೮೯, ೭೯೦, ೭೯೧, ೭೯೨, ೭೯೩, ೭೯೪, ೭೯೫, ೭೯೬, ೭೯೭, ೭೯೮, ೭೯೯, ೮೦೦, ೮೦೧, ೮೦೨, ೮೦೩, ೮೦೪, ೮೦೫, ೮೦೬, ೮೦೭, ೮೦೮, ೮೦೯, ೮೧೦, ೮೧೧, ೮೧೨, ೮೧೩, ೮೧೪, ೮೧೫, ೮೧೬, ೮೧೭, ೮೧೮, ೮೧೯, ೮೨೦, ೮೨೧, ೮೨೨, ೮೨೩, ೮೨೪, ೮೨೫, ೮೨೬, ೮೨೭, ೮೨೮, ೮೨೯, ೮೩೦, ೮೩೧, ೮೩೨, ೮೩೩, ೮೩೪, ೮೩೫, ೮೩೬, ೮೩೭, ೮೩೮, ೮೩೯, ೮೪೦, ೮೪೧, ೮೪೨, ೮೪೩, ೮೪೪, ೮೪೫, ೮೪೬, ೮೪೭, ೮೪೮, ೮೪೯, ೮೫೦, ೮೫೧, ೮೫೨, ೮೫೩, ೮೫೪, ೮೫೫, ೮೫೬, ೮೫೭, ೮೫೮, ೮೫೯, ೮೬೦, ೮೬೧, ೮೬೨, ೮೬೩, ೮೬೪, ೮೬೫, ೮೬೬, ೮೬೭, ೮೬೮, ೮೬೯, ೮೭೦, ೮೭೧, ೮೭೨, ೮೭೩, ೮೭೪, ೮೭೫, ೮೭೬, ೮೭೭, ೮೭೮, ೮೭೯, ೮೮೦, ೮೮೧, ೮೮೨, ೮೮೩, ೮೮೪, ೮೮೫, ೮೮೬, ೮೮೭, ೮೮೮, ೮೮೯, ೮೯೦, ೮೯೧, ೮೯೨, ೮೯೩, ೮೯೪, ೮೯೫, ೮೯೬, ೮೯೭, ೮೯೮, ೮೯೯, ೯೦೦, ೯೦೧, ೯೦೨, ೯೦೩, ೯೦೪, ೯೦೫, ೯೦೬, ೯೦೭, ೯೦೮, ೯೦೯, ೯೧೦, ೯೧೧, ೯೧೨, ೯೧೩, ೯೧೪, ೯೧೫, ೯೧೬, ೯೧೭, ೯೧೮, ೯೧೯, ೯೨೦, ೯೨೧, ೯೨೨, ೯೨೩, ೯೨೪, ೯೨೫, ೯೨೬, ೯೨೭, ೯೨೮, ೯೨೯, ೯೩೦, ೯೩೧, ೯೩೨, ೯೩೩, ೯೩೪, ೯೩೫, ೯೩೬, ೯೩೭, ೯೩೮, ೯೩೯, ೯೪೦, ೯೪೧, ೯೪೨, ೯೪೩, ೯೪೪, ೯೪೫, ೯೪೬, ೯೪೭, ೯೪೮, ೯೪೯, ೯೫೦, ೯೫೧, ೯೫೨, ೯೫೩, ೯೫೪, ೯೫೫, ೯೫೬, ೯೫೭, ೯೫೮, ೯೫೯, ೯೬೦, ೯೬೧, ೯೬೨, ೯೬೩, ೯೬೪, ೯೬೫, ೯೬೬, ೯೬೭, ೯೬೮, ೯೬೯, ೯೭೦, ೯೭೧, ೯೭೨, ೯೭೩, ೯೭೪, ೯೭೫, ೯೭೬, ೯೭೭, ೯೭೮, ೯೭೯, ೯೮೦, ೯೮೧, ೯೮೨, ೯೮೩, ೯೮೪, ೯೮೫, ೯೮೬, ೯೮೭, ೯೮೮, ೯೮೯, ೯೯೦, ೯೯೧, ೯೯೨,

11-12.45.
sd/ G.R. Desai.
clerk of the court.

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Civil appeal No. 257 of 1945.

In the court of the District Judge,

At Bijapur.

1. Shivlingappa Malkajappa Salanki — Appellant.
aff 25 lingayat Nadar residant of Talikot Taluka Muddebihal

Vs.

1. The Province of Bombay. — Respondent.

claim Rs. 5/- for court fee and jurisdiction.

Herein the appellant abovenamed being aggrieved by the judgme and decree passed by the joint civil judge senior division Bijapur on ~~22-10-1945~~ 19-11-45 in civil suit No.433 .of 1944 begs to prefer this appeal on the following among other grounds:-

(1) the judgment and decree of the lower court are contrary to law and evidence.

(2) The lower court entirely misconceived the case of the plff

(3) It was never the case of the plff that the ground below the kattas is a part of the public road and that it belongs to the Saranjamadars and as such Government have no claim to it under section 37 of the Land Revenue Code.

4. It is throughout the case of the plff that the site below the katta belongs to himself it is never part of the road and it is in the occupation of the plff and his ancestors eversince the construvtion of the house itself.

(5) It was only as an alternative case that the plff pleaded that the village Gaothana belongs to the Saranjamdars and section 37 of the Land Revenue code did not apply to the sites in that village.

6. The map (ex. 38) stated to have been prayed at the time of the city survey and produced at the fag end of the hearing of the case is entirely wrong as clearly it can be seen that the pillars at th entrance protruding beyond the wall are not indicated in it.

(7) The lower court erred in not giving any consideration to e x.4 and in brushing it aside as not helping the plff on the altogether misconceived basis that it was the case of the plff tha

he was holding the site below the katta on a license from the Rastas.

(8) The lower court failed to gi ve due consideration to the fact that the deft was contending that the kattas only were encroachments and was claiming that they should be removed while he had no objection to the pillars which protude beyond the wall and can be removed without demolising the wall itself.

(9) The pillars stand on the steps and the stones of the steps are so interwo that they cannot be removed without affecting the pillars and the whole thin is one construction and these steps are not claimed to be rts of the road.

10. The kattas are along side of the wall and the kattas in civil suit No. 433 of 1944 are entirely within the area covered by the pillars while the kattas in civil suit no. 221 of 1944 go beyond the pillars, to some extent but are within the area of the steps.

11. Thus the kattas are on the land belonging to the plff and his ancestors and the land in question under the katta has never been a part of the road.

12. The lower court while not accepting the contention of the deft that the kattas are recent erred in holding that the presumption under section 110 of the Evidence Act could not raised in favour of the plff.

13. The lower court erred in holding that the kattas are merely tempora,y and only appendages.

14. 14. The lower court ought to have seen that the kattzas with the pillars and steps show juridical possession of the plff and the case presented in thi case is much stronger than the one presented in 2 Bom.L.R. 411 and 23 Bom [redacted] 238 and 39 Bom .L.R. 216.

15. The lower court ought to have seen that there waas no evidence on behalf the deft to show that the plff was not the owner.

16.. The lower court ought to have seen that there was no evidence before th court to show how the enquiry officer came to the conclusion that the land below the kattas was a part of the road.

17. The lower court ought to have seen that the plff relies on section 110 of the Evidence A ct and not on adverse possession and the issues are not correctl framed.

18. The lower court erred in holding that the Rastas were not the grantees of the soil and that they are not the grantees of all the land in the Gaothana wl would otherwise vest in Govt under section 37 of the L. R. Code.

19. The interpreation of the alienation register made by the lower court i wrong.

37/95

20. That Talikot being an Inam village addthe Saranjamdar being entitled to all the lands which would otherwise vest in Govt under section 37 of the Land Revenue Code ~~that~~ deft can claim no such righ under that section in respect of any land at Talikot.

It is therefore prayed that the decree of the lower court be set aside and the plff be held to be the owner of the site under the ~~khata~~ Kabas and that the deft has no right to proceed against it under section 37 of the land Revenue Code and to decree the suit with costs throughout.

Bijapur.

11-12-1945. sd/ R. S. Deshpande.
for
Pleader/the appellant.

Deficit court fee to be paid within one week from today.

11-12-45. sd/ M.B.H.
D.J.

Particulars to be entered in the retister of regular appeals.

19-12-45. sd/ G.R. Desai.
clerk of the court

21. The lower court erred in holding that the suit is time barred.

22. The lower court ought to have seen that for a legal notice the notife under section 190 of the Land Revenue Code ought to be personally served and substituted service could be permitted only if was proved that the person could not be found.

23. The lower court ought to have seen that a person who was in jail could not be said to have been a person who could not be found.

Ex 6. 39 5/-

Civil appeal No.257 of 1945.

In the District Court, at Bijapur:

Shivalingappa Malkajeppa Salanki age 25 Lingayat trader resident of Talikot taluka Muddebihal — Appellant (Applicant).

Vs.

1. The Province of Bombay. — Respondent (opponent).

Herein the pleader for the appellant-applicant begs to state as under:-

(1) The judgment in the above case was given on 22nd October 1945 and the decree was signed on 19-11-45 . The appeal is filed on 11-12-1945 within 30 days from the date of the signing of the decree.

(2) Application for copies of judgment and decree was filed on 17th November 1945 and the copies were delivered on 10-12-1945 and the appeal itself was filed the next day. Excluding the period from 17th November to 10th December the appeal is filed within 30 days from the date of the judgment.

(3) But the copy furnished bears the date 28th of November 194 as the date when the copies were ready for delivery and 10th December as the date when they were actually delivered. This would make the appeal seven days beyond time.

4. The application for copy was given just 5 or 6 days before the expiry of the period of 30 days and the clerk of the undersigned was on the enquiry as to whether the copies were ready. On the 10th he told that the copies were ready and took the copies on that day. On the 10th night the undersigned pleader noticed that it was mentioned therein that the copies were ready for delivery on 28-11- 1945 and immediately appeal memo was prepared without waiting to inform the client and the appeal memo was prepared and filed. The clerk of the undersigned pleader says that the copies were not ready before the 10th and that he had been enquiring for the copies which were not ready.

(5). The office never informed that the copies were ready on the 28th of November and that they should be taken.

It is prayed that the delay of 7 days in question be excused and the appeal be proceeded with as being in time.

Bijapur.
12-12-1945.

Sd/ R.S. Deshpande.
Pleader for the appellant.

Solemnly affirmed before me by Krihsnaji Bhagwant Desai of Bijapur clerk to Mr. R.S. Deshpande pleade whom I personally know.

Dist Court Bijapur.
18-12-45.

sd / N.S. Korti.
Dy. Sheristedar.

Notice to show cause to issue.
19-12-1945

sd/ M.B.H.
D.J.

7-3-51

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Suits:

Bijapur.
Encroachments over lands forming part of public roads in the village of Talikot (Taluka Muddevihal).

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 3799
Bombay Castle, 21st May 1946.

Read Government Resolution, Legal Department, No.4211, dated the 1st June 1945.

Endorsement by the District Government Pleader, Bijapur, No.738, dated the 25th October 1945.- Forwarding a copy of his letter No. 737 dated the 25th October 1945 addressed to the Collector of Bijapur and stating that the suits noted in the margin were decided by the Joint Civil Judge, Bijapur, on 22nd October 1945, when the following order was passed :-

"Dismissed with costs".

In the Court of the First Class Sub-Judge, Bijapur.
Civil Suits Nos. 433 and 434 of 1944.

Shivalingappa Malkajappa Salunke of Talikot ..... Plaintiff;

Versus.

The Province of Bombay. ..... Defendant.

Claim- Rs. 300.

Basalingappa Chanbasappa Kinaji of Sindgi. ..... Plaintiff;

Versus.

The Province of Bombay. ..... Defendant.

Claim-Rs. 200.

and forwarding an uncertified copy of the judgment.

A Letter from the Collector of Bijapur No.L.A.W.172 dated the 15th April 1946 and stating ~~in Civil Suit No.433 of 1944~~ that the plaintiff in Civil Suit No. 433 of 1944 has filed Civil Appeal No. 257 of 1945 in the Court of the District Judge, Bijapur, against the decision of the Joint Civil Judge, Senior Division, Bijapur, dated the 22nd October 1945 and requesting sanction to its defence.

RESOLUTION.- 1. The result of Civil Suit No.434 of 1944 is recorded.

2. Sanction is accorded to the defence of Civil Appeal No. 257 of 1945 in the Court of the District Judge, Bijapur, on the lines of the brief accompanying Government Resolution, Legal Department, No. 4211 dated the 1st June 1945 and the favourable grounds contained in the judgment of the Joint Civil Judge, Senior Division, Bijapur, dated the 22nd October 1945.

By order of the Governor of Bombay,

Original R.M. Mehta

R.M. MEHTA,
Assistant Secretary to Government.

To

The Revenue Department,
The Commissioner, Southern Division,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

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Held after issue
File in S.Bg. 3/45

SHO
22/5

A.S.
22/5

S.Bg 3/45
3/5/46

413 (4)

2719—5,760—11-44—R(s)* Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ
ಹುಳುಮುನಾಮೆಯು
(ಆರ್ಡರ ೪೧, ರೂ. ೪೫).

(ಫಾರ್ಮ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟ ಗ, ತಿಡ್ಯೂಲ ೧)

ಹುಕುಮನಾಮೆಯು

ಬಾಗಲಕೋಟೆ ಇಲ್ಲಿಯ ಅತಿರಿಕ್ತ ಜಿಲ್ಲಾ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಬಾಗಲಕೋಟೆ ಇಲ್ಲಿ. ನಿಟ್ಟು ೨೦

ತೀರ್ಮಾನದ ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೨೫೬ ೧೯೪೪ನೇ ಪೈಕಿ

(೧) ಶಿವಲಿಂಗಪ್ಪಾ ಮಲ್ಲಪ್ಪಾ ಕಾಡಪ್ಪನವರ ಸಾ|| ಬಾಲಂಕಿ ಮಯೂ, ಅಂಚಾಮೇ ಮೈಸೂರ ನಾಗ ತಪ್ಪಾಶೇಟ ಪಾಲ್ಕಿ ಮುದ್ದಲಾಪೂರ ಈವರು ಅಪೀಲಂಟ (ಮೊದಲನೇ ವಾದಿ)

(೧) ಈ ಕ್ರಾಪ್ಟಿನಸ್ಸ ಆಫ್ ಬಾಂಬೆ — ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿ)

ಬಾಗಲಕೋಟೆ ಇಲ್ಲಿಯ ಶಿವಪ್ಪಿಳ ನೇ ವರ್ಗ ಸಬ್ ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೪ನೇ ಇಸವಿಯ ನವೆಂಬರ ತಿಂಗಳ ೨೪ನೇ ತಾರೀಖು ತೀರ್ಪಿನೇದರಲ್ಲಿ ತಾರೀಖು ೨೭ನೇ ಅಕ್ಟೋಬರ ತಿಂಗಳ ಸನ್ ೧೯೪೫ನೇ ಇಸವಿಯ ಹುಳುಮು ನಾಮೆಯ ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡಿಕೊಂಡಿರಲ್ಲ ಎಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಬಾಚು - ಅಕೀಲತೆಕಾರ — ಇವನು ವಿಚಾರಿ ತಾರೀಖಿನ ಹುಕುಮು ನಾಮೆಯ — ಮೇಲೆ ಬಾಗಲಕೋಟೆ ಇಲ್ಲಿಯ ಅತಿರಿಕ್ತ ಜಿಲ್ಲಾ ಜಜ್ಜ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿದಂತಾಗುತ್ತದೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೫ನೇ ಇಸವಿ ತಿಂಗಳನ ೩೦ ತಾರೀಖಿನ ದಿವಸ Mr. N.S. Mehani ಅತಿರಿಕ್ತ ಜಿಲ್ಲಾ ಜಜ್ಜ ಮುಂದೆ, ಅಪೀಲಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ Mr. R.R. Deshpande ಹಾಗೂ ವಕೀಲ Mr. V.V. Akkal ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ Mr. I.C.R. Rao Advt. ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣೆಯ ಬಗ್ಗೆ ಒಂದಪ್ಪರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡಿದಂತಲ್ಲ ಬರುತ್ತದಲ್ಲ —

ಕೆಳಗಿನ ಕೋರ್ಟಿನ ಹುಕುಮು ನಾಮೆಯನ್ನು
ಕಾಯಂ ಮಾಡಿ ಅಪೀಲುವನ್ನು ಖರ್ಚು ನಿಶ್ಚಿತರಣ ತಳ್ಳಿಹಾಕಿದೆ —

45 — 11 /

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದೇ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ	ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	೭	೪	–	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....			
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ	–	–	–	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	೨	೮	–	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	೪	೪	–	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ			
೫. ೫ ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫	–	–	೫. ೫ ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫	–	–
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ಸ್ಟಾಂಪು..	೧೨	–	–	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ			
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ ತೆಗೆದಿದ್ದರಿಂದ....	೧೦	೮	–	೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು			
	೧೨೦	೮	–	೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ			
ನಾಲ್ಕೆ ಕೇಸುಗಳಲ್ಲಿ ಮಾಡಿದ್ದಾರೆ.	–	೧೦	–				
ಒಟ್ಟು....	೪೯	೧೭	–	ಒಟ್ಟು....	೧೫		

ಈ ಹೊತ್ತು ತಾರೀಖು ೩೦ ತಿಂಗಳು ಜೂನ್ ಸನ್ ೧೯೪೯ ಇಸವಿಯ ದಿನ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಅದೆ.

ಸಹಿ/- ಕಾ.ನಿ. ಸಿದ್ದವನ್ನ
ಬೆಂಚ್ ಕ್ಲರ್ಕ್ ಆಫೀಸು

ಸಹಿ/- N.S. Mohani
ಅಡ್ವೊಕೇಟ್ ಹೈಕೋರ್ಟ್.

ಅಪೀಲೆಂಟ ವಕೀಲ.

ಸಹಿ/- K.R. Rao
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ನೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವವಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

"True Copy"

Deputy Govt. Reader
Bijapur

47 ~~24~~

Received on 11-12-1945.
Registered on 19-12-1945.
Decided on 30-6-1948.
Duration 2 years 6 months and 19 days.

In the Court of the Assistant Judge, Bijapur.

Civil appeal No.257 of 1945 from Decree in Civil Suit No.433 of 1944 of the Court of the Joint Civil Judge Senior Division, of Bijapur (Mr.S.M.Bhoj).

Pleaders.

Mr R.S. Deshpande

1. Shivalingappa Malkajappa Salanki, age 25, Lingayat, trader, Resident, of Talikot, taluka Muddebihal. — appellant-original plff

Vs.

Mr K.R. Rao. Govt Pleader

1. The Province of Bombay. — respondent-original deft.

Claim Rs. 5/-

This appeal and Appeal No.258 of 1945 have been treated and heard as companion appeals and the main judgment is written in this appeal. In both the appeals the Province of Bombay is the respondent and though the appellants are different the reliefs sought by them are identical in nature.

2. The facts leading to the suits, out of which these appeals arise, may be shortly stated thus :-

Civil suit No.433 of 1944 was instituted by the plaintiff-appellant Shivalingappa Malkajappa in the court of the First Class Subordinate Judge, Bijapur as he was then called, against the Province of Bombay to obtain a declaration that the orders of the Enquiry Officer under notices, dated 12-3-1943 and 2-8-1943, alleged to have been passed on 10-3-1943 and 31-7-1943, respectively, declaring the portions of the Katta on the site described in para 1 of the plaint and the foot-path described in para 2 of the plaint to be encroachments on the roads and directing them to be removed and incorporated in the roads near them, were wrong, illegal, unauthorised and ultravires and that the plaintiff- appellant is the owner of the said site, and for an injunction restrain-ing the defendant-respondent through its servants from removing them or interfering with their existence, alleging that he owned a house in Chalati No.56 of sheet No.3 in Kumbar galli

X. a village in Muddebihal taluka, that there were kattas in either side of the entrance door of the house adjoining it, that he also owned a shop building, bearing city survey No. 582 of sheet No. 6, in the Bazar Galli at Talikot

at Talikot X that in front of the shop and adjoining it there was a foot-path forming part of the shop-property and covered over with corrugated iron-sheets, that the Government appointed and Enquiry officer to investigate into the claims for lands under section 37 of the Bombay Land Revenue Code, that the Enquiry Officer issued a notice as regards the property described in para 1 of the plaint on 12-3-1943, stating that he had passed an order on 10-3-1943, holding part of the Katta to be an encroachment, that he issued another notice on 2-3-1943, stating that he had passed an order on 31-7-1943 to the effect that the foot-path described in para 2 of the plaint was also an encroachment, that he stated in the notices that the Katta would be removed and the foot-path incorporated in the road, that none of the notices were served on the plaintifff--appellant at all. as he was addtenue under the Defence of India Rules. that he was not aware of any inquirly held by the Enquiry Officer and the notices. dated 12-3-1943 and -2-3-1943, were not served on him at all, that consequently, the orders passed by the Enquiry officer were not binding on him and the limitation period of one year from the date of the orders would not run against him, that he was released from jail long after one year from 12-3-1943, that the orders of the Enquiry officer were wrong, ultra vires unauthorised and illegal and not binding upon the plaintiff-appellant, that Talikot was an Inam village of the Rastas of Poona and all the land in the village-Gavthan, which under section 37 of the Bombay Land Revenue Code would normally vest in Government. would be the property of the Rastas, that Government, therefore, had no powers to start an inquiry of the kind held by the Enquiry officer and section 37 of the Bombay Land Revenue Code had no application to any site in the Talikot village, that moreover, the sites under the Kattas that and that under the corrugated iron-sheets, referred to in paras 1 and 2 of the plaint, belonged absolutely to the plaintiff-appellant, that it was customary in villages to have Kattas on either side of the main entrance door and his house was os built as to allow

the necessary place for the Kattas, that the Kattas were there since the house was built and were in his enjoyment openly for more than 60 years. that similarly the foot-path described in para 2 of the plaint also stood in his land and was in the enjoyment of himself and his predecessors for more than 60 years, that the Talikot village belonged to the Rastas and they had acquiesced in the Kattas and the foot-path being there and being used by the plaintiff appellant and his predecessors as their absolute property, that the Rastas had recentsy passed and agreement allowing the plaintiff-appellant to retain the foot-path as his property and that since the defendant-respondent threatened the plaintiff-appellant with the removal of the Kattas and the foot-path. he was compelled to bring the suit.

3. The plaintiff-appellant Baslingappa Chanbasappa Kinagi in Appeal No. 258 of 1945 filed Civil Suit No. 221 of 1944 asking for similar reliefs, complaining that the Kattas on either side of the main entrance door of his house in Chalati Nos. 53 and 54 in Kumbar galli were sought to be removed by the defendant-respondent in virtue of the order passed by the Enquiry Officer on 10-3-1943 under section 37 of the Bombay Land Revenue Code, holding that they were encroachments. He also claimed the sites covered by the two Kattas as belonging to him. He further claimed that he and his predecessors were in possession and enjoyment of the Kattas for more than60 years. His other allegations in the plaint, except the one concerning limitation. were practically the same as those of the plaintiff-appellant in appeal No. 257 of 1945.

4. The reply of the defendent-respondent was the denial of the title of both the plaintiffs to the disputed sites on the ground that they were part of the public roads which were in existence long before the grant of the Saranjam to the Rastas. that. therefore. they could not pass to the Saranjamdar by a subsequent grant, that

they were part of the high-ways, which were included in the unassessed waste which was excluded from the grant of the Saranjam, that they remained the property of the Government and that the plaintiffs were not in possession of the sites for more than 60 years. The defendant-respondent's further contentions were that City Survey was introduced in the village of Talikot with the consent of the Saranjamdar, that the Enquiry Officer had rightly held that the Kattas were encroachments under section 37 of the Bombay Land Revenue Code, that the decision was binding on the plaintiffs and that Civil Suit No.433 of 1944 was barred by limitation under section 37(3) of the Bombay Land Revenue Code, read with sections 15(2) of the Indian Limitation Act, as it was filed more than 14 months after the decision in respect of the encroachment of the Kattas was communicated to the plaintiff on 2-7-1943.

5. The learned Joint Civil Judge, Senior Division, heared both the suits as companion suits and dismissed them, holding that the plaintiffs had failed to prove their title to the disputed sites either by adverse possession or otherwise, and that Civil Suit No.433 of 1944 was barred by limitation. Consequently, both the plffs have preferred these appeals.

6. The appellant in this appeal, viz: Appeal No.257 of 1945, having abandoned his claim regarding the foot-path or the pavement in front of his shop by his pursis (Exh. 42), the only points that arise for determination are:-

(1). Whether the plaintiffs in Civil Suit No.433 of 1944 and 221 of 1944 prove their title to the disputed sites either by adverse possession or otherwise ?

(2). Whether Civil Suit No.433 of 1944 is barred by limitation ?

7. My findings are :-

1. No.

2. Yes.

Reasons.

8. Admittedly, Talikot village was granted in Saranjam Inam to the Rastas of Poona several years ago. City Survey was introduced

in that village in 1939 with the consent of the Saranjamdar, as can be seen from Exhs.29 and 30. The Enquiry officer, who was appointed to investigate into the various claims arising out of the introduction of the City Survey, found on an enquiry held under section 37(2) of the Bombay Land Revenue Code that the Kattas put up on either side of the entrance doors of the appellants were encroachments on public roads. As a result of his decision the Kattas were sought to be removed, but in the mean-time the appellants brought two suits, which are the subject-matter of this appeal and Appeal No.258 of 1945, to obtain a declaration that the orders passed by the Enquiry officer were illega, unauthorised and ultra-vires. In the first place the appellants claim that the sites on which the Kattas stand are of their absolute ownership. They contend that the Talukot village village being an Inam village of the Rastas, all the land in the Gavthan, which under section 37 of the Bombay Land Revenue Code would ordinarily vest in Government, is the property of the Rastas and that therefore the Government could not start an inquiry under section 37 of the Bombay Land Revenue Code. They also claim to have been in possession of the sites for more than 60 years with the consent of the Rastas, who recognised their title to the sites. The first and the foremost question, therefore, for consideration would be whether the plaintiffs-appellants have established their title to the disputed sites beyond all doubt so as to entitle them to the reliefs sought.

9. It is to be remembered that the Inam in question is a political Saranjam. A saranjam is prima facie, and in the absence of express words or necessary implications to the contrary, a grant of the royal share of the revenue only from lands or villages and not of the soil. The burden of proving that it is in any particular case a grant of the soil lies very heavily upon the party alleging it. (vide Ramchandra Mantri V. Venkatarao Mantri, 6 Bombay 598) In the present case one Amrit Vasudev

(Exh.23) has been examined on behalf of the plaintiffs to prove their title to the disputed sites. This witness is a Wahivatdar of the Rastas' property at Talikot. He is made to produce an extract from the Register of Alienated villages and lands (Exh.26), but not the Sanad, which would have thrown a flood of light as to the real natu. of the grant. The witness does not say that the sanad is lost, but he merely says that it is not with him. The production of the Sanad is deliberately with held, lest it might go against the case of the plaintiffs. That extract from the Alienation Register (Exh.26) does not in any way invest the Rasta with the status of a grantee of the soil. In fact, even a cursory perusal of the entries in Exh. 26 would at once show that only a share in the royal revenue was granted to the Rasta and not the soil. Though, in columr. No.2 of Exh.26, Talikot village is described as having been alienated, in columb No. 20 we find that sum of Rs.4695-1-6 has been mentioned under the heading 'Land Revenue Alienated'. Then in column 12, there are the particulars of the village in respect of which the land revenue is granted. The total acreage of the entire village was 15250 acres, carrying a survey assessment of Rs.6836-6-0. Out of the aforesaid area, 316 acres are unassessed wate and 6000 acres blong to the Kadim Inamdars. It is apparent that the unassessed wate and the area belonging to the Kadim Inamdars were excluded from the grant. After this exclusion, land revenue totalling Rs.4700-0-6 was granted and out of the amount Rs.4-15-0 were deducted on account of Salams. Thus land revenue totalling Rs.4695-1-6 was the subject of the grant in favour of the Rasta. It is, therefore, futile to contend that the Rasta is the grantee of the soil and not of the royal share of the revenue.

10. It will appear from the above discussion that under the grant, unassessed waste, measuring 316 acres, besides the area belonging to the Kadim Inamdars totalling about 6000 acres, was excluded from the grant and reserved by the Government for itself. The learned pleader for the

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10. It will appear from the above discussion that under the grant, unassessed waste, measuring 316 acres, besides the area belonging to the Kadim Inamdars totalling about 6000 acres, was excluded from the grant and reserved by the Government for itself. The learned pleader for the appellants, however, argues that since column No.13 in Exh. 26 is blank, it should be presumed that nothing was reserved by the Government. There is no substance whatever in this argument. The heading of column No.13 reads thus: "If part

only of the village, the survey no. etc". To my mind, the question of granting a particular part of the village does not arise in this case, as the grant relates to the royal share of the revenue only. However, the mere non-mentioning in column No.13 of the areas reserved by the Government is not in itself sufficient to hold that nothing was reserved by the Government. In point of fact, the entries in column Nos. 12,14 and 15 are clear enough to point out the portion of the village out of which the grantee was to recover the land revenue. It is extremely interesting to note that the plaintiffs' witness Amrit Vasudev (Exh.23) admits without equiv. -tion that the deduction of 316 acres and 6000 acres from the village, as shown in the extract from the Alienation Register (Exh.26), is correct. Under the circumstances, it cannot be contended that the unassessed waste described in para 12 was not reserved by the Government.

11. The unassessed waste of 316 acres shown in Exh.26 does not carry an assessment. It has been admitted by Amrit Vasudev (Ex.23) that that portion is not fit for cultivation and that it is inclusive of the Gavthan, tank, burial ground, roads and foot-paths. It has been further admitted by him that now 316 acres are reduced to 291 acres. In view of these plain admissions of his, the roads and the foot-paths running through the village will be deemed to have been carved out of the unassessed waste and nothing else. Further, it may be noted that Exh.28, which is an extract from the village form No.I for the year 1917-18, points to the same conclusion. In Exh.28 the details of the unassessed waste, which by that time was reduced to 291 acres, have been given. The sites set apart for public and other special purposes are Gayran, Gavthan, tank, burial ground, roads and foot-paths. It is, however, argued on beha of the appellants that the roads and the foot-paths referred to in Exh.28, have nothing to do with the road running in

front of their houses, which is in dispute. On the face of it, the argument is fallacious. It is not the case of the appellants that the road runing in front of their house is of their owner ship. They faintly suggest that it belongs to the Inamdar but since it forms part of the unassessed waste, which was excluded from the grant of the sranjam, it must belong to the Government. The decision in Vinayakrao Keshavrao v. The Secretary of State for India in Council (23Bombay39) has been relied upon by the appellants to show that though the grant was of the royal share of the revenue only, it could not have the effect of depriving the Inamdar of his rights over the road which forms part of the village. In my opinion, the facts of that case can clearly be distinguished from those in the present case. In that case, the plaintiffs, who were the Inam--dars of certain lands, which included a village, brought a suit in 1895 for a declaration of their ownership in and right to cultivate(a) two plots of land forming part of the said village, and (b) the bed of a stream which flowed through this village. The two plots had been admittedly part of the cultivable lands belonging to the plaintiffs and had formerly been separately numbered under the survey previous to that of 1863. At the new survey, however, made in that year, the two plots were set apart for the village site and were neither numbered nor measured. No was the bed of the stream then either numbere or measured. In 1869, a summary settlement was made with the plaintiffs in respect of lands of their villgge and a Sanad was issued to them under Bombay Act VII of 1863. But the two plots of land were exempted from the Settlement and so also was the bed of the stream. The Collector pleaded, in answer to the suit , that the Government only claimed the power to require the plaintiff to use the two plots in question as a village site and contended that as these two plots had been set apart at the time of the new survey in 1863 for the village site, and as on that understanding they had been exempted from assess--ment, and as the plaintiffs had received the benefit of that exemption for more than 20 years, the plaintiffs had no right

to cultivate them. As to the bed of the stream, he contended that it was a public stream and did not belong to the plffs. Upon these facts, it was held by the High Court that " the plffs were entitled to the declaration prayed for and that section 61 of the Bombay Land Revenue Code did not apply. That sec-tion relates back to section 56 and both refer only to lands the property of Government in unalienated villages or unalienated portions of villages. They do not empower the Government to confiscate any land belonging to an Inamdar and to confer it upon the persons who live in his village. The mere omission to number the plots of land could not have the effect of turn-ing them into a part of the village site, or take away the right of the plaintiffs. Nor did the omission of Government to assess these lands deprive the plaintfffs of them or make them the property of Government " It will thus be seen that th decision in that case does not govern the facts of the present case in-as-much as here the unassessed waste was never the subject-matter of the grant to the Rasta.

12. The learned pleader for the appellant next invites my attention to Government Order 3130 of 12-11-1920 quoted at page 369 of Gupte's Treatise on the Bombay Land Revenue Code, 3rd Edition, and argues that roads in alienated villages cannot be governed by section 61 of the Bombay Land Revenue Code. The order relied on by him reads thus:- " Roads of alienated villages are not governmentx by sec-tion 61 unless the right of Government to the ownership of such roads has been reserved.". I have, however, already observed above that since the road running in front of the appellants' house formed part of the unassessed waste, which was excluded from the grant, it belonged to Government. The learned Government Pleader, who appears for the respondent, draws my attention to a passage at page 391 from the same edition of Gupte which correctly desribes the legal position at issue. It reads thus:- " Land which prior to the alienatio of a village had been dedicated by the state as High road would certainly not pass to the alienee by a subsequent grant even of the soil of the village, but the dedication would sur

for the benefit of the public. Unauthorised occupation, even by the alienee of land so set apart, could be dealt with by the Collector under section 61, not withstanding that the village including all the lands thereof were alienated " There is, therefore. no substance in the argument that section 61 has no application to the roads in alienated villages.

13. The Enquiry Officer has found that the Kattas on either side of the entrance doors of the appellants are encroachments upon the public road belonging to the Govern-ment. The appellants, however, claim the sites below the Kattas to be of their ownership and Wahivat extending over more than 60 years. Under the old customary law and section 37 of the Bombay Land Revenue Code, the presumption is that title to the village site is vested in the Government and in order to rebut that presumption the appellants must prove either that they had got a title better than the title of the respondent or that they had obtained a title by adverse possess-ion for more than 60 years, as held in Vasta alias Bhagwan Balwant v. The Secretary of State for India in Council- (45 Bombay 789). The appellants may have been in possession of the sites below the Kattas for some time, but that is not enough to shift the burden of proof on the respondent. That possession must have its origin in some legal title acquired by adverse possession or otherwise in order to defeat the claim of the Goverment. In the present case, none of the appellants hold any title deed. According to them, the Kattas form part of their respective houses and are not merely temporary appendages or adjuncts to the house, as held by the lower court. They claim that their houses along with the Kattas were built more than 60 years ago. The situation of their houses is shown in Exh.40, which is a sketch prepared by their witness Hashimsaheb Kashimsaheb(Exh 39). I may, how-ever, state that they have failed to prove that the houses were built more than 60 years ago. Apart from the interested testim-y of Baslingappa Chanbasappā, plaintiff in Civil Suit No.221 of 1944, the only witness examined on behalf of the plaintiffs-appellants to depose to the age of the Kattas is Chanbasappa

Sharanappa (Exh 41), who claims to be a man of 73. The witness merely says that he has seen the houses of the plaintiffs Bas--lingappa and Salanke and that the Kattas in front of these houses are old. This evidence does not in any way establish that the houses and the Kattas are more than 60 years old. In fact, the witness admits that he attained the age of discretion when he was 20 years old and consequently it cannot be said th t he has knowledge of the construction or whaivat of the houses and the Kattas extending over more than 60 years. I was taken to Talikot to inspect the sites in dispute. My inspection Notes are at Exh.17 in this appeal. As a matter of fact the parties ought to have taken the trial Judge to the sites before the suits were heard, so that he would have been in a better position to appreciate all the points in the light of the evidence adduced before him. It is now contended for the first time before me that the stones which form the basis of the pillars and the Kattas or the walls and the Kattas are so situated as to lead to the inference that both the Kattas and the houses were built at one time. During the course of my inspection, I have found that one of the slabs which forms the basis of the first part of the northern wall of the appellant in this appeal also forms the basis of the Katta, which is to the east of his entrance door. I have also found that another slab forms the basis of both the western pillar and the Katta to its west. The same situation is to be found in respect of the house of the plaintiff in Civil suit No.221 of 1944, where the bases of the pillars and the Kattas are peculiarly situated. At any rate, the appellants' structures, as now situated. do not in any way tend to help them in establishing that the Kattas in question are more than 60 years old. In fact, the house of the plaintiff in Civil suit No.221 of 1944 was found to be recently built. As regards the house of the plaintiff in Civil suit No.433 of 1944, it did not appear to be so old as claimed by him. I could see that the first part of the northern wall of his house was a recent construction. In that case, the small Katta, which is by its side and marked as 'A' in the sketch (Exh.40), will also be a recent construction in view of the

common slab forming their basis. From such evidence as there is on the record and from my local inspection, I am unable to hold that the Kattas in both the suits have been there for sixty years prior to the institution of the suits. The possession and user of the sites over which the Kattas in question have been bilt are not enough for the plaintiffs to avail of the presumption arising under section 100 of the Indian Evdence Act. They have to show that their possession is of such a character as would lead to a preseumption of title and the proof of title must be sufficiently strong to shift the burden of proof. That proof is entirely lacking in the present case. In the circumstances, I agree with the finding of the lower court that the plaintiffs in both the suits have failed to establish their title to the disputed property either by adverse possession or otherwise.

14. The question of limitation, so far as Civil Suit No.433 of 1944 is concerned, arises in this manner. The Enquiry Officer passed his order on 10-3-1943, holding that the Kat as were encroachments. The notice of the order was affixed to the house of the plaintiff on 2-7-1943, as he could not be found (Vide Exh.35). The plaintiff filed the suit on 29-9-1944, after giving the statutory notice of 2 months, that is to say, he filed the suit 27 days after the period of limitation prescribed by section 37(3) of the Bombay Land Reve-nue Code, read with section 15(2) of the Indian Limitation Act. It is, however, contended by the plaintiff-appellant that he was kept in jail as a detenue under the Defence of India Rules and was released a year after 12-3-1943, that he was not personally served with the notice of the order passed by the Enquiry Officer and that consequently the limiation period of one year from the date of the order will not begin to run against him so as to bar the suit. In my opinion, this contention cannot be upheld. Clause 4 of section 37 of the Bombay Land Revenue Code lays down that any person shall be deemed to have had due notice of the inquiry or order under that section if the notice thereof has been given in accordance with the rules made in this behalf by the Provincial Government. Rule 29 made under section

37 requires such notice to be served in the manner provided in section 190 for the service of a summons. Under section 190, every summons shall be served by tendering or delivering a copy of it to the person summoned , or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence. In the present case, the latter mode of service has been adopted, as can be seen from Exh.35. The service of notice, therefore, cannot be deemed to be illegal or invalid. It is, however, contended on behalf of the plaintiff that he being a detenue in jail under the Defence of India Rules, it cannot be said that he could not be found so as to entitle the serving officer to affix the notice to his (plaintiff's) house and that the notice not being properly served on him, the bar of limitation does not come into operation. The plaintiff might have been detained in jail under the Defence of India Rules, but the Land Revenue Code does not make any provision for such a contingency. Under that Code, it would suffice if the serving officer adopts one of the two modes of service prescribed by section 190. In the present caske, the serving officer could not find the plaintiff and, therefore, he affixed the notice to his (plaintiff's) house as mentioned in Exh.35. There is nothing wrong or illegal in this mode of service, which is permissible under the law. The service being proper and legal, Civil Suit No.433 of 1944 will have to be held as out of time.

15. In the result, therefore, the findings of the lower court being correct, both the appeals will have to be dismissed.

Order.

16. The decree of the lower court is donfirmed and the appeal is dismissed with costs.

30th June, 1948. Sd/-N.S.Metrani.
Assistant Judge.

" True Copy "

District Government Pleader,
Bijapur.

5) 770

its:
Bijapur.
Encroachments over lands forming part of public roads in the village of Talikot (Taluka Muddevihal).

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 7390
Bombay Castle, 5th August 1948.

Read Government Resolution, Legal Department, No. 3799, dated the 21st May 1946.

Letter from the District Government Pleader, Bijapur No.555, dated the 19th July 1944, stating that Civil Appeal No.257 of 1945 filed by the plaintiff in the suit noted in the margin was decided by the Assistant Judge, Bijapur, on 30th June 1948, when the following order was passed:-

In the Court of the First Class Sub-Judge, Bijapur. Civil Suit No. 433 of 1944.	
Shivalingappa Malkajappa Salunke of Talikot. ..... Plaintiff; Vs. The Province of Bombay..Defendant.	
Claim- Rs. 300.	

> "The decree of the lower Court is confirmed and the appeal is dismissed with costs."

forwarding uncertified copies of the judgment and decree.

RESOLUTION :- The result of the appeal is recorded.

Subd. for sign. along with G.R. recording the result of C.A. No 257. Orders at p. 2. 4/8 AS

By order of the Governor of Bombay,

Original R.M. Mehta

R.M. MEHTA,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Bijapur.

LK. 3/8.

Issued 5/8/48

D.G.P's letter No. 585 dt 26-7-48

S. Bij 3/45
7/45

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2719—5,700—11-44—R(a).

Civ. A 42 b

ಹುಕುಮನಾಮೆಯು

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮು ನಾಮೆಯು (ಅರ್ಜಿರಳಿ, ಕಾ. ೪೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ, ಶಿಡ್ಯೂಲ ೧)

ಇಲ್ಲಿಯ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಇಲ್ಲಿ

ಕೇಸ್ಸಿಲಾ ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೨೫೭ ರಲ್ಲಿ ಹೋಪೈಕೆ

(೧) ಶಿವಲಿಂಗಪ್ಪಾ ಮಲಕಾಯಪ್ಪಾ
ಕಾಲಂಕಿ ವಯಸ್ಸು, ಉದ್ಯೋಗ, ವ್ಯಾಪಾರ
ಸಾ ಮಾಳ್ಯ ಕೊಂಬ ಪೈಕಿ ಮುಳ್ಳೆಳಿಯವ್ವ — ಅಪೀಲೆಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿ).

ವಿರುದ್ಧ

(೧) ಮಲ್ಲಪ್ಪನ ಕೂಸ ಯಂಕಾಜಿ — ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಫಿರ್ಯಾದಿ).

ಇಲ್ಲಿಯ ನೇ ವರ್ಗ ಸಬ್-ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೫ನೇ ಇಸವಿಯ ನವೆಂಬರು ೪೩ನೇದರಲ್ಲಿ ತಾರೀಖು ೨೨ ನೇ ಅಕ್ಟೋಬರ ರಂಗಳ ಸನ್ ೧೯೪೫ನೇ ಇಸವಿಯ ಹುಕುಮು ಮಾಡಿರು ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲಿ ಹೇಳಿದ ಇವನ ಸದ್ರಿ ತಾರೀಖಿನ ಹುಕುಮು ಮಾಡಿರು ಮೇಲಿ ಇಲ್ಲಿಯ ಈ ಅಪ್ಪೀಲು — ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೭ ಇಸವ — ತಿಂಗಳಿನ ೩೦ ತಾರೀಖಿನ ದಿವಸ Mr. N.S. Mahajani ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ Mr. R.S. Deshpande ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ Mr. K.R. Rao ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಒಂಪನ್ನರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಈ ಕೋರ್ಟಿನ ಹುಕುಮು ನಾಮೆಯನ್ನು ಕಾಯಂ ಮಾಡಿ ವಕೀಲ ನನ್ನ ಖರ್ಚು ಸಹಿತ ವಿಚ್ಚಿದೆ—

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ	ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕನು. ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾಧ್ಯಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	೭	೪	-	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	—	—	—
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ	—	—	—	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ	—	—	—
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	೨	೮	-	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	೪	೮	-	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	—	—	—
೫. ೬೫ ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫	—	-	೫. ೧೫ ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫	—	-
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ಸ್ಟಾಂಪು...	೧೨	೮	-	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	-		
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	-	-	-	೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು	-	-	
ಲ ಮೇಯರ್ ಮುಖ್ಯ ಪಾಲಿಕೆ (ಲಾ ಕೆಲಸ)	೧೦	೮	-	೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	-	-	
ಹೈಕೋರ್ಟ್ ಮೈಸೂರು ಹಾಗೂ ಬೆಂಗಳೂರು	೧೦	೮	-				
ಒಟ್ಟು....	೪೯	೧	-	ಒಟ್ಟು....	೧೫	—	-

ಈ ಹೊತ್ತು ತಾರೀಖು 30 ತಿಂಗಳು ಜೂನ್ ಸನ್ ೧೯೪೯ ನೇ ಇಸವಿಯ ದಿನ

ನ್ನು ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ನ್ನು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಆದೆ.

Sd/- S.M. Bathawad
Registrar

Sd/- N.S. Mahadeva Rao
ಅಡಿಶನಲ್ ಜಡ್ಜ್

ಅಪೀಲೆಂಟ ವಕೀಲ.

Sd/- K.R. Rao
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಸೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವವಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳ. ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

Deputy Registrar

Assistant Govt Pleader
Bijapur